

The **NORTH CAROLINA REGISTER**

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ISSUE DATE: AUGUST 1, 1991

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 1 page or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
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 (April 1991 - December 1992)

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*****	*****	*****	*****	*****
04/01/91	03/11/91	03/18/91	05/01/91	08/01/91
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12/15/92	11/24/92	12/01/92	01/14/93	04/01/93

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

JRD:LLT:MMS:lrj
DJ 166-012-3
91-1443

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

June 21, 1991

Z. Creighton Brinson, Esq.
Taylor & Brinson
210 East Saint James Street
Tarboro, North Carolina 27886

Dear Mr. Brinson:

This refers to the 1991 redistricting of council districts and realignment of voting precincts for the Town of Tarboro in Edgecombe County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 13, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

**TITLE 1 - DEPARTMENT OF
ADMINISTRATION**

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to adopt rules cited as 1 NCAC 30F .0101 - .0103, .0201 - .0202, .0301 - .0305, .0401 - .0403.

The proposed effective date of this action is December 1, 1991.

The public hearing will be conducted at 10:00 a.m. on September 10, 1991 at the Large Conference Room, State Construction Office, Legislative Office Building, Room 403, 300 North Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Any interested person may present his/her comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003, (919) 733-7232.

CHAPTER 30 - STATE CONSTRUCTION

**SUBCHAPTER 30F - STATE BUILDING
COMMISSION CONTRACTOR EVALUATION
PROCEDURES**

SECTION .0100 - GENERAL PROVISIONS

.0101 AUTHORITY

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by Public Law to perform a multiplicity of duties with regard to the State's Capital Facilities development and management program. In the specific area of state capital improvement project contractor evaluation, the SBC is empowered to develop procedures for accomplishment of such evaluation.

Statutory Authority G.S. 143-135.26(4).

.0102 POLICY

It is the policy of the SBC to evaluate the work performed by prime contractors for capital improvement projects based on criteria contained herein. Further, it is considered of paramount importance that every state capital improvement project be constructed of a level of quality and adherence to a time schedule in keeping with the contract plans and specifications. It is to this end that individual prime contractor's performance

on state capital improvement projects should be fairly and consistently evaluated and such evaluations used as a factor in determining qualifications of prime contractors to bid on future state capital improvement projects. If such evaluations lead to a determination that the level of performance by a contractor so warrants, the contractor may be disqualified from bidding on state capital improvement projects for a specified period of time.

Statutory Authority G.S. 143-135.26(4).

.0103 DEFINITIONS

For purposes of this Subchapter, the following definitions shall apply:

- (1) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvements projects and related matters with the State Construction Office (SCO) and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of these Rules may have other titles within the individual's agency but shall carry out the duties assigned herein to the Capital Projects Coordinator. Whenever the Capital Projects Coordinator is referenced herein, it shall be understood to include a designated assistant or representative. Concerning evaluation of contractors, the Capital Projects Coordinator is responsible for the agency's evaluation of each phase of the project as well as the overall contractor evaluation.
- (2) "Contractor" means any individual, firm, partnership, corporation, association or other legal entity licensed to perform construction in the State of North Carolina. The contractor evaluation procedure applies to a firm designated as a "prime contractor" and may include contractors receiving awards under the single prime or multiple-prime method of contract bidding and award. The prime contractor shall be responsible for performance of all sub-contractors. Accordingly, the evaluation of the prime contractor will include evaluation of the work of all sub-contractors, required by terms of the contract to be listed by the prime contractor, and all material suppliers.
- (3) "Project Designer" means any individual, firm, partnership, corporation, association or other legal entity licensed to practice architecture, engineering, or landscape architecture in the State of North Carolina.
- (4) "Funded Agency" means the department, agency, authority or office that is named in

the legislation appropriating funds for the design and/or construction of a project.

- (5) "Owner's Representative" is an individual appointed by the using agency to represent the using agency on all user-related matters.
- (6) "The Owner" is the representative of the using agency as defined in Rule .0103(9) of Subchapter 30D - State Building Commission Designer Selection Procedures.
- (7) "Scope Statement" means a written description of the capital project that is to be designed and constructed. Normally, the scope statement shall reflect the written project description as contained in the project cost estimate validated by the State Construction Office.
- (8) "Contractor Evaluation Form" is the form to be used for all contractor evaluations. The form, approved by the State Building Commission, is the only approved document for this purpose; the form may be reproduced by agencies as required.

Statutory Authority G.S. 143-64.31; 143-135.26.

SECTION .0200 - PROJECT AND CONTRACT INFORMATION

.0201 PROJECT DESCRIPTION

(a) It shall be the responsibility of each Capital Projects Coordinator, for each Capital Improvements project as defined in G.S. 143-135.27 requiring professional services, to provide the State Construction Office with a written description of the professional services desired, the scope of work, schedule requirements, amount of authorized funds and other appropriate information. This phase of the project development is intended to convey project information.

(b) It shall be the joint responsibility of the Capital Projects Coordinator and Office of State Construction, to the best of their belief and knowledge, to ensure that the contract plans and specifications accurately reflect the description of the work to be performed by each prime contractor. This phase of the project development, intended to convey contract information, which is a sub-set of project information, is critical as the evaluation of the prime contractor's performance will depend in part on the contract requirements clearly delineating the work to be performed and establishing an appropriate time frame for contract completion.

Statutory Authority G.S. 143-135.26(4).

.0202 PRE-BID CONFERENCES AND SITE REVIEWS

(a) The Capital Projects Coordinator shall evaluate each assigned project to determine if the complexity of a project warrants conducting one or more pre-bid conferences including site visits. The Capital Projects Coordinator shall be responsible for ensuring that the owner's representatives are familiar with the contract requirements and the consequences of the construction work on the owner.

(b) This step is included as attempts may be made by the owner to request that additional tasks be performed by the contractor to meet the owner's special requirements without the capital projects coordinator's and designer's knowledge and the contract plans and specifications do not contain any provision for these special requirements. Development of any special provisions and a general understanding of the contract requirements are a vital part of the contract process prior to the opening of bids.

Statutory Authority G.S. 143-135.26(4).

SECTION .0300 - EVALUATION OF CONTRACTORS

.0301 DEFINITIONS

(a) "Pre-Bid Phase" is the phase of the contract work prior to receipt of bids. Not every project lends itself to the need for pre-bid meetings or site visits, but every project should be evaluated to determine if this phase is required (See Rule .0202 of this Subchapter). There is normally no firm requirement for a contractor to participate in pre-bid conferences or site visits, if such are conducted. However, if utilized, the interest or participation by a contractor in this phase of the construction process does demonstrate a good faith effort by a prime contractor to understand the project requirements and resolve differences prior to bid opening. For this reason, participation by contractors in this phase does clearly demonstrate an effort on the contractor's part to facilitate the construction process and should, therefore, be evaluated. The Capital Projects Coordinator must be involved in this process.

(b) "Contract Award Phase" is the critical period during the award process and includes but is not limited to submission of all documents required for award, including Minority Business Enterprise (MBE) data, bonds, insurance documentation, and the executed contract documents.

(c) "Construction Phase" is the most critical portion of the work and includes not only field execution of the work but also as a minimum: project/job site mobilization, shop drawing processing, development of job schedule,

coordination/cooperation with other contractors, owner and designer as appropriate, coordination of the activities of sub-contractors, field supervision, prosecution of the works, adherence to quality standards, timeliness of response to field conditions or modified job requirements including change order management. The Capital Projects Coordinator must be involved in the job execution to the degree that meaningful evaluations can be prepared for this phase; this involves Capital Projects Coordinator's attendance at monthly progress meetings or more often if necessary. Attendance at and participation in scheduled progress meetings by prime contractors shall be evaluated; special provision shall be made for evaluation of contractors who have been assigned project coordinator duties.

(d) "Post Construction Phase" includes but is not limited to the development and completion of the job punch list, assembly of all warranty information and product brochures, and provision of "as built" information. The Capital Projects Coordinator must maintain continuing involvement in the project until final close-out to evaluate the contractor's performance in this final phase.

Statutory Authority G.S. 143-135.26(4).

.0302 OVERALL JOB PERFORMANCE

(a) The Capital Projects Coordinator shall determine the contractor's overall performance for the completed project. The overall rating is intended to reflect the performance of the prime contractor(s) in fulfilling the terms of their contract.

(b) The Capital Projects Coordinator will take into consideration the clarity of the project plans and specifications, any owner's special requirements placed on the project, and other factors such as weather and overall difficulty of the construction in assigning the overall evaluation. Obviously, the terms of the contract including project scheduling, cooperation among prime contractors, and other factors shall be considered. Further, the Capital Projects Coordinator will consider the impact of other factors, outside the contractor's control, on job performance such as owner's or designer's failure to promptly process catalog material submittals, change orders, or detailed inspections which impinge upon job progress.

(c) The Capital Projects Coordinator must be involved in the project during the construction phase to adequately provide a meaningful evaluation and shall invite input from the owner's representative and the State Construction Office.

(d) The project designer shall be offered the opportunity to provide an assessment of the prime contractor(s) at job completion.

(e) On all multiple prime capital improvement projects, each prime contractor shall be offered the opportunity to provide input concerning the prime contractor being evaluated.

(f) The Capital Projects Coordinator may also evaluate the work performed by a sub-contractor or material supplier required to be named within the terms of the contract when such evaluation will provide clarification or enhancement of the evaluation assigned to the prime contractor. At the discretion of the Capital Projects Coordinator, input may be invited from any or all sub-contractors or material suppliers required to be named within the terms of the contract. If unsolicited input is received by the Capital Projects Coordinator from a sub-contractor or material supplier required to be named within the terms of the contract, such input may be considered in the evaluation process.

(g) The Capital Projects Coordinator shall be responsible for the final overall rating, which is a number rounded to one significant digit past the decimal (e.g., 2.5, 3.4, etc.) and shall be listed on the bar line noted as "Overall Rating." The evaluations for sub-phases of the project are to be completed on the rating form but may show as an "X" or a numerical rating on the line for the sub-phase at the option of the Capital Projects Coordinator. This summary evaluation shall not necessarily reflect a precise numerical averaging of scores for the various project phases but will be generally representative of those scores.

(h) Prior to completion of the final contractor evaluation, the Capital Projects Coordinator shall submit the proposed evaluation to the prime contractor for comment. Comments received from the prime contractor shall be considered by the Capital Projects Coordinator.

(i) To be timely, and useful, contractor evaluation data will be accumulated within 30 days of final project acceptance. At this stage, the Capital Projects Coordinator shall prepare the final contractor evaluation, provide a copy to the prime contractor being evaluated, and submit the final evaluation to the Office of State Construction. The form approved by the SBC shall be used for this purpose.

Statutory Authority G.S. 143-135.26(4).

.0303 INTERIM CONTRACTOR EVALUATION

The prime contractor(s) may request preparation of an interim evaluation form by the Capital Projects Coordinator or the Capital Projects

Coordinator may elect to prepare an interim evaluation. The Capital Projects Coordinator shall seek input from the project designer if an interim evaluation is provided. This interim evaluation is intended to reflect performance to date and should be used as a guidance device for correction of performance prior to the final evaluation.

Statutory Authority G.S. 143-135.26(4).

.0304 SUBMISSION OF FINAL EVALUATION

The Capital Projects Coordinator shall submit the completed final evaluation to the SCO with a copy to the prime contractor. The prime contractor shall have the opportunity to comment on the evaluation to the SCO with a copy to the Capital Projects Coordinator. These final evaluation comments shall become a part of the final evaluation record. The final contractor evaluation shall be completed and presented to the SCO within 60 days of the project's final acceptance. SCO will monitor the completion of all required evaluations and will not close out a project on which all evaluations have not been performed. If the evaluation is not completed within the prescribed time frame, the SBC may advise SCO to process no further contract awards for an agency until the evaluation is complete. Under such circumstances, the SBC will require the Capital Projects Coordinator to appear before the Commission to explain why the evaluation has not been completed.

Statutory Authority G.S. 143-135.26(4).

.0305 REPORT COMPILATION

(a) SCO will be responsible for maintaining contractor evaluation data. This data shall be maintained on an individual job basis, and shall also be maintained cumulatively by contractor (based on contractor license number).

(b) The data maintained by the SCO will reflect performance history for a period of five years. All evaluation data on completed projects over five years old will be removed from SCO files and will not be used as a factor in the cumulative evaluation.

(c) A contractor's cumulative evaluation which falls below a mark of 3.5 will be determined to have provided an unsatisfactory level of performance and may not be allowed to bid on or serve as a sub-contractor on State capital improvement projects during a corrective period. All references to pre-bid disqualification status in this Section shall also be considered to apply to disqualification of a prime contractor to serve as

a sub-contractor on State capital improvement projects during the disqualification period.

(d) To be utilized for pre-bid disqualification, a prime contractor's cumulative evaluation must be based on a minimum of three evaluations on at least three separate capital projects. Further, if a contractor is assigned a single final evaluation of 2.5 or lower, this action alone shall be sufficient to call the contractor's performance into question resulting in pre-bid disqualification during a corrective period.

(e) In both instances, i.e., a cumulative mark falling below 3.5 or a single evaluation of 2.5 or lower, the SCO shall convene a panel of five persons to review the evaluation and make a recommendation to the SBC for disqualification of the contractor for bidding. The panel shall consist of a minimum of three design/ construction professional State employees of which a minimum of one employee shall be a licensed architect or engineer as appointed by the Director of State Construction and two members of the SBC as appointed by the Chairman of the Commission of which a minimum of one shall be a licensed contractor.

(f) In all instances, notification of a contractor having been assigned to a pre-bid disqualification status shall be by the Chairman of the State Building Commission and only then after review and approval by the Commission of the disqualification action.

(g) The normal disqualification as approved by the Commission shall be for a period of two years. The two-year period is intended to provide opportunity for a contractor to implement significant corrective action to improve performance. At the completion of the two-year period, the prime contractor can make application for reinstatement to the qualified bidders list; reinstatement will be subject to action by the SBC. If the SBC approves reinstatement, the contractor's pre-bid disqualification will be removed, thus allowing the contractor to bid.

(h) Removal of a contractor from the pre-bid disqualification status, upon approval by the SBC, will involve deletion of all evaluations from the State Construction Office's records.

(i) If a contractor has been removed from the qualified bidders list by virtue of accumulated evaluations falling below 3.5 and routine removal of five-year old evaluations causes the contractor to achieve an overall evaluation score of 3.5 or higher, the contractor will not be automatically reinstated to the qualified bidders list but rather must remain in a disqualified status for a total of two years with reinstatement considered by the SBC as outlined in this Rule. If after the two-year corrective period the SBC does not approve

removal of a contractor from the pre-bid disqualification status, the prime contractor will be allowed the opportunity to reapply after a period of 12 months and annually thereafter until the pre-bid disqualification status is removed.

(j) Lists of all contractors who are in a pre-bid disqualification status will be maintained by the SCO. Prior to bid opening, the project designer will be responsible for obtaining from the SCO a list of those contractors in a pre-bid disqualification status and shall ensure that no bids for State capital improvements projects will be read from a contractor in such status.

Statutory Authority G.S. 143-135.26(4).

SECTION .0400 - POST-EVALUATION PROCEDURES

.0401 POST-OCCUPANCY EVALUATION

Following project close-out, the prime contractor is often required to take remedial action to correct discrepancies which fall under product or construction warranty. While this phase of the project normally proceeds without serious difficulty, Capital Projects Coordinators may at their option, submit a special evaluation during the contract warranty period if circumstances dictate. This special evaluation will involve completion of the optional post-occupancy evaluation portion of the form but will not normally involve re-computation of the evaluation(s) assigned for the previous four phases. A new overall contractor evaluation will be assigned which will take into consideration the previously assigned evaluation. If the post-occupancy contractor evaluation is completed, the contractor being evaluated will be afforded the same opportunity to provide input on the evaluation as was provided on the evaluation made at job construction completion.

Statutory Authority G.S. 143-135.26(4).

.0402 AWARDS PROGRAM

Capital Projects Coordinators who determine that contractor performance on a completed capital improvement project merits special recognition may nominate the contractor for a Certificate of Merit. Nominations will be made by the Capital Projects Coordinator to the SCO which will screen the nominees and will in turn make appropriate recommendations to the SBC. The SCO may also initiate award recommendations. The SBC will consider all nominations and make final approval of all awards. The State Building Commission shall arrange for presentation of the certificates at a suitable ceremony

during a time and place of its own choosing; however, these presentations will normally be made during the annual State Construction Conference. The SCO shall provide staff support to the State Building Commission for this program.

Statutory Authority G.S. 143-135.26(4).

.0403 APPEALS OF ASSIGNED EVALUATIONS OR DISQUALIFICATION FROM BIDDING

(a) If a prime contractor considers that the assigned evaluation is improper and the opportunity for rebuttal is insufficient to resolve the matter, the prime contractor may appeal the action to the SCO. It is emphasized that this appeal is an appeal to an assigned evaluation score and is separate from an appeal resulting from assignment to a non-qualified bidder status described in Rule .0305 of this Subchapter.

(b) To evaluate an appeal of an individual final or interim evaluation, the SCO will appoint and convene a rating panel of five persons of which three will be professional State employees and of the State employees at least one member is a licensed professional architect or engineer to hear the appeal and render a decision. The remaining two members, one of which will be a licensed contractor, are to be from the SBC as appointed by the Chairman. The hearing shall involve, at a minimum, the Capital Projects Coordinator and the owner's representative as well as representatives of the prime contractor who shall appear before the panel and which is open to the public. The SCO hearing panel shall issue a report to the SBC on the hearing and the decision reached.

(c) If the Capital Projects Coordinator or prime contractor desire further recourse to the initial decision by the SCO on an assigned evaluation or a decision by the SBC concerning disqualification to bid on state capital improvement projects or a decision by the SBC to not reinstate a contractor to the bidders list, the decision may be formally appealed to the Office of Administrative Hearings pursuant to N.C.G.S. 150B.

Statutory Authority G.S. 143-135.26(4).

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the Genetic Engineering Review Board intends to amend rule(s) cited as 2 NCAC

48E .0101, .0302 - .0303; and adopt rule(s) cited as 2 NCAC 48E .0202.

The proposed effective date of this action is December 1, 1991.

The public hearing will be conducted at 10:00 a.m. on September 4, 1991 at the Conference Room, L.Y. Ballentine Bldg., 2109 Blue Ridge Rd., Raleigh, NC 27612.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to W.A. Dickerson, Secretary of the Genetic Engineering Review Board, N.C. Department of Agriculture, Plant Industry Division, P.O. Box 27647, Raleigh, NC 27611. Further information on the proposed rules may be obtained by contacting Mr. Dickerson at the above address or calling (919) 733-6930.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48E - GENETICALLY ENGINEERED ORGANISMS

SECTION .0100 - DEFINITIONS

.0101 DEFINITIONS

In addition to the definitions contained in G.S. 106-768, as used in this Subchapter:

- (3) "Contained facility" is one that complies with applicable National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules: Appendix G or Appendix K, or the proposed Appendices P or Q, as published in 52 Federal Register 29800, August 11, 1987, and as amended in 53 Federal Register 53262, December 30, 1988, or the final adopted version thereof (regardless of whether the facility receives any support from NIH) or United States Department of Agriculture (USDA) APHIS Standard and Supplemental Conditions for Containment of Plant Pests Under Permit. Where a facility is of a type not covered by these NIH Guidelines or USDA permit conditions, a "contained facility" is one that has been determined by the Commissioner to be adequately contained.

Statutory Authority G.S. 106-768; 106-770.

SECTION .0200 - DELEGATION OF AUTHORITY

.0202 INSPECTION OF FACILITIES

The Commissioner may conduct inspections to determine if facilities meet the definition of "contained facilities" as set forth in 2 NCAC 48E .0101(3).

Statutory Authority G.S. 106-770.

SECTION .0300 - TYPES OF PERMITS: PERMIT APPLICATIONS: PUBLIC NOTICE: PUBLIC HEARING: ISSUANCE OF PERMITS: MODIFICATION, SUSPENSION, REVOCATION OF PERMITS

.0302 GENERAL PERMITS

(c) Public notice of any proposed rule regarding the establishment of general permits shall be given in accordance with G.S. 150B-12 and by:

- (1) mailing a copy of the proposed general permit to any person who has filed a written request to be so notified;
- (2) publishing notice of the proposed general permit at least once in newspapers having general circulation throughout ~~North Carolina~~ the State.

Statutory Authority G.S. 106-770.

.0303 LIMITED PERMITS

(b) Application Procedure:

- (1) Where the applicant is making a federal submission regarding the proposed release or commercial use of a genetically engineered organism, a copy of the federal submission appended to a Submittal Summary for the Release of a Genetically Engineered Organism, as prescribed by the Board, shall constitute an application to the Commissioner.
- (2) Where there is no federal submission regarding the proposed release or commercial use of a genetically engineered organism, limited permit applications shall be on forms or in the format that the Board shall prescribe, appended to a Submittal Summary for the Release of a Genetically Engineered Organism. Such limited permit applications shall include all of the data required by the Board.
- (3) An applicant for a limited permit may designate as "confidential" any portions of the application which the applicant believes are entitled to treatment as confidential business information (CBI), as defined in this Subchapter. The applicant shall submit two copies of the permit application to the Commissioner: one containing CBI ("CBI" copy), and the other with CBI deleted ("public information" copy) from both the application sub-

mission and the Submittal Summary for the Release of a Genetically Engineered Organism. Deletions of confidential business information in the public information copy shall be indicated in a manner prescribed by the Commissioner.

- (4) Within ten days of receipt of an application, the Commissioner shall send written notification to the applicant informing the applicant whether or not the application is complete and, if not, what additional information is required to complete the application.
- (5) ~~A completed application shall consist of a completed Submittal Summary for the Release of a Genetically Engineered Organism; all of the data required in the federal submission; or, where there is no federal submission, all of the data required by the Board. The applicant shall identify the specific site of the proposed release as soon as feasible after the specific site has been determined; provided, however, that the Commissioner may require identification of the specific site of the proposed release at any time.~~
- (6) During the permit review process, the Commissioner may request additional information as deemed necessary to determine potential adverse effects of the proposed release or commercial use. To the extent possible, however, the Commissioner shall base the permit decision on the data originally submitted as part of a completed permit application.
- (7) The Commissioner may extend or reopen the period for public comment to allow for public review of additional information received from the applicant. If additional information is designated as CBI the Commissioner may, upon request, extend or reopen the period for petitioning for access to CBI pursuant to 2 NCAC 48E .0402.
- (8) ~~(7)~~ The application may be withdrawn at any time by written notice from the applicant to the Commissioner.
- (c) Public Notice of Proposed Release or Commercial Use.
 - (1) Within 15 days after receiving a completed permit application, the Commissioner shall publish notice and a brief description of the proposed release or commercial use as follows:
 - (A) by mailing a copy of the published notice and a copy of the public information version of the Submittal Summary for the

Release of a Genetically Engineered Organism to any person who has filed a written request to be notified of proposed releases or commercial uses; and

- (B) by publishing notice of the proposed release at least once in a newspaper having general circulation in each county where a release is proposed to occur and by mailing a copy of the public information version of the Submittal Summary for the Release of a Genetically Engineered Organism to the County Manager or County Administrator in the county(ies) where the proposed release(s) is to occur;
- (C) by publishing notice of a proposed commercial use at least once in newspapers having general circulation throughout the State.

Statutory Authority G.S. 106-770.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Social Services intends to amend rules cited as 10 NCAC 3J .2502, .2602, .2701, .2904 - .2905, .3001, .3102, .3201 - .3202, .3204, .3412, .3414, .3421, .3423, .3425 - .3426, .3908, .3918, .3921, .3925 - .3926, .3938 - .3940; 35E .0106, .0312; 35F .0002; 41I .0102, .0304; 42C .2305, .2703; 42D .1407; 42Q .0011 - .0015; 42V .0201, .0501 - .0504, .0802, .0901, .0908; 43L .0201, .0401; repeal rule(s) cited as 10 NCAC 42H .0203, .0401; 42P .0102, .0201, .0401 - .0404; and adopt rules cited as 10 NCAC 41I .0401 - .0410; 42H .0801, .0901 - .0914; 42V .0208 - .0209, .0805;

The proposed effective date of this action is December 1, 1991.

The public hearing will be conducted at 10:00 a.m. on September 4, 1991 at the Division of Facility Services, Council Bldg., Rm. 201, 701 Barbour Dr. (Dorothea Dix Campus), Raleigh, NC.

Comment Procedures: Comments may be presented in writing anytime before or at the public hearing, or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Donna Creech, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27611, (919) 733-3055.

Editor's Note: 10 NCAC 411 .0102, .0304, .0401 - .0410 have been filed as temporary rules effective July 10, 1991 for a period of 180 days to expire on January 5, 1992.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3J - THE OPERATION OF LOCAL CONFINEMENT FACILITIES

SECTION .2500 - CLASSIFICATION AND HOUSING

.2502 FEMALE INMATES

Male and female inmates shall not be placed in the same confinement unit, dayroom or other living area and, in addition, female inmates shall be housed out of sight of male inmates.

Statutory Authority G.S. 153A-221.

SECTION .2600 - FIRE SAFETY

.2602 FIRE EQUIPMENT

Each jail shall provide the following emergency fire equipment:

- (1) fire extinguishers that meet all of the requirements in National Fire ~~Prevention~~ Protection Association pamphlet number 10 which is hereby adopted by reference pursuant to G.S. 150B-14(c); and
- (2) smoke detection equipment that meets the requirements of the North Carolina State Building Code.

Statutory Authority G.S. 153A-221.

SECTION .2700 - SECURITY

.2701 GENERAL SECURITY REQUIREMENTS

Each jail shall meet the following security requirements:

- (1) provide for the secure confinement of inmates from the time of their passage through the security perimeter until release;
- (2) provide for the locked storage of firearms ~~when~~ before persons enter the security perimeter;
- (3) prevent the passage of contraband;
- (4) prevent unauthorized contact between inmates and persons from outside the jail;
- (5) provide a ground-level perimeter exterior that is well lighted; and
- (6) provide a communications link with outside agencies for use in emergencies.

Statutory Authority G.S. 153A-221.

SECTION .2900 - SANITATION AND PERSONAL HYGIENE

.2904 SHOWERS AND TOILETS

Inmates shall have access to showers a minimum of three times per week. Inmates on work release shall have daily access to showers. Bath towels and soap shall be provided. Inmates shall have unrestricted access to toilets.

Statutory Authority G.S. 153A-221.

.2905 PERSONAL HYGIENE ITEMS

(a) Every inmate detained over 24 hours shall be issued without charge the following items as appropriate:

- (1) Toothbrush;
- (2) Toothpaste or powder;
- (3) Comb; and
- (4) Feminine hygiene products.

(b) After a newly admitted inmate has exhausted his or her initial supply of personal hygiene items, each jail shall make the listed items available either for purchase or without charge. The items shall be resupplied to indigent inmates without charge.

Statutory Authority G.S. 153A-221.

SECTION .3000 - COMMISSARY OR CANTEEN SERVICES

.3001 AVAILABILITY OF SERVICES

Each jail shall make commissary or canteen items, including snacks and personal ~~hygiene~~ care products, available for purchase by inmates. The items shall be available either directly from officers or through contract vending. The price of these items shall be no higher than local retail prices. Snacks and personal care products do not have to be made available for purchase if they are provided without charge.

Statutory Authority G.S. 153A-221.

SECTION .3100 - FOOD

.3102 MEAL SERVICE

(a) Each jail shall provide at least three meals for inmates, two of which must be hot, at regular times during each 24-hour period. There shall be not more than 14 hours between the evening meal and breakfast.

(b) Food shall be served to inmates on individual serving trays. Eating utensils, consistent with security considerations, and condiments shall be provided.

(c) While food is being transported, either from inside or outside the jail it shall be covered to

prevent contamination. ~~and to maintain~~ Food must be maintained at appropriate serving temperatures.

(d) Food shall never be used as a reward or punishment.

(e) Each jail shall keep a daily record of the number of meals served.

Statutory Authority G.S. 153A-221.

SECTION .3200 - HEALTH CARE OF INMATES AND EXERCISE

.3201 MEDICAL PLAN

(a) A written medical plan shall be developed in compliance with G.S. 153A-225 and it shall be available for ready reference by jail personnel. The medical plan shall include a description of the health services available to inmates.

(b) The written plan shall include policies and procedures that address the following areas:

- (1) Health screening of inmates upon admission;
- (2) Handling routine medical care;
- (3) The handling of inmates with chronic illnesses or known communicable diseases or conditions;
- (4) Administration, dispensing and control of prescription and non-prescription medications;
- (5) Handling emergency medical problems, including but not limited to emergencies involving dental care, chemical dependency, pregnancy and mental health;
- (6) Maintenance and confidentiality of medical records; and
- (7) Privacy during medical examinations and conferences with qualified medical personnel.

(c) ~~Inmate health complaints must be solicited daily by a health professional or by an officer. Inmates must be provided an opportunity each day to communicate their health complaints to a health professional or to an officer.~~ Qualified medical personnel shall be available to evaluate the medical needs of inmates. A written record shall be maintained of the request for medical care and the action taken.

(d) Inmates shall not perform any medical functions in the jail.

(e) The medical plan shall be reviewed annually.

Statutory Authority G.S. 153A-221.

.3202 HEALTH SCREENING FORM

The health screening form completed upon admission by an officer shall be available to jail of-

ficers, except for information that is legally required to be kept confidential, and a copy of the form shall be kept in any medical file that is maintained for inmates.

Statutory Authority G.S. 153A-221.

.3204 EXERCISE

After the fourteenth consecutive day of confinement, each inmate shall be provided opportunities for physical exercise at least three days weekly for a period of one hour each of the days. Physical exercise shall take place either in the confinement unit if it provides adequate space or in a separate area of the jail that provides adequate space. The opportunity for physical exercise shall be documented.

Statutory Authority G.S. 153A-221.

SECTION .3400 - STANDARDS FOR NEW JAIL DESIGN AND CONSTRUCTION

.3412 FLOORS, CEILINGS, AND WALLS

(a) ~~All floors in confinement units shall be sloped toward drains located outside of the cell areas, and the drains shall be tamper-resistant if necessary for security.~~

(b) All ceilings, walls, and floors in confinement units shall have a finished surface that is easily cleaned, nontoxic, and predominantly of light colors.

Statutory Authority G.S. 153A-221.

.3414 WINDOWS AND GLAZING

(a) Windows and window framing, including glazing, shall be made of materials necessary to provide the degree of security required for the area in which they are used.

(b) Glazing shall be diffused or obscured if it affords a view into confinement units from outside the jail.

(c) View panels shall be made of materials necessary to provide the degree of security required for the area in which they are used, and those used for confinement units shall have an area that permits observation of the entire unit.

(d) Natural light shall be admitted into all confinement units either directly or indirectly.

Statutory Authority G.S. 153A-221.

.3421 CONFINEMENT UNITS

The governing body shall decide what confinement unit or combination of confinement units it will include in its jail: single segregation cells, single cells, multiple occupancy cells, or dormitories provided each county or region has

the means to protect or isolate an inmate, when necessary, in a cell with a toilet, a sink, a drinking fountain and a security mirror.

Statutory Authority G.S. 153A-221.

.3423 STANDARDS FOR SINGLE CELLS

Each single cell shall have:

- (1) a minimum floor space of 50 square feet;
- (2) a minimum floor dimension of 7 feet;
- (3) a toilet, a sink, a drinking fountain and a security mirror; and
- (4) access to a dayroom.

The requirements of Paragraph (3) of this Rule shall be satisfied if inmates have unrestricted access, except during emergencies, to a dayroom that includes one toilet per eight inmates, one sink with a security mirror per eight inmates and one water fountain.

Statutory Authority G.S. 153A-221.

.3425 STANDARDS FOR DAYROOMS

Each dayroom shall have:

- (1) a security vestibule at its entrance;
- (2) a minimum floor space of 105 square feet or 35 square feet per inmate, whichever is greater;
- (3) sufficient seating and tables for each inmate;
- (4) a telephone jack or other telephone arrangement provided within the dayroom; ~~and~~
- (5) a way for officers to observe the entire area; ~~and~~
- (6) one toilet per eight inmates unless the inmates have unrestricted access to a cell with a toilet, sink, drinking fountain and security mirror.

Statutory Authority G.S. 153A-221.

.3426 STANDARDS FOR DORMITORIES

Each dormitory shall house no more than 40 inmates and shall have:

- (1) a minimum floor space of 70 square feet per inmate including both the sleeping and dayroom area;
- (2) one shower per eight inmates, one toilet per eight inmates, one sink with a security mirror per six eight inmates, and one water fountain; ~~and a security mirror;~~
- (3) a telephone jack or other telephone arrangement provided within the dormitory;
- (4) space designed to allow a variety of activities;
- (5) sufficient seating and tables for all inmates; and

- (6) a way for officers to observe the entire area from the entrance.

Statutory Authority G.S. 153A-221.

SECTION .3900 - MUNICIPAL LOCKUPS

.3908 FEMALE INMATES

Male and female inmates shall not be placed in the same confinement unit, dayroom or other living area and, in addition, female inmates shall be housed out of sight of male inmates.

Statutory Authority G.S. 153A-221.

.3918 SANITATION AND TOILETS

Each municipal lockup shall comply with the North Carolina Commission for Health Services rules governing sanitation as codified in Title 15A Chapter 18A Section .1500 and which are hereby adopted by reference pursuant to G.S. 150B-14(c). Inmates shall have unrestricted access to toilets.

Statutory Authority G.S. 153A-221.

.3921 MEAL SERVICE

(a) Each municipal lockup shall provide at least three meals for inmates, two of which must be hot, at regular times during each 24-hour period. There shall be not more than 14 hours between the evening meal and breakfast. An inmate shall be provided a meal if he is in the municipal lockup during a normal meal hour.

(b) Food shall be served to inmates on individual serving trays. Eating utensils, consistent with security considerations, and condiments shall be provided.

(c) While food is being transported, either from inside or outside the jail, it shall be covered to prevent contamination. ~~and to maintain Food must be maintained at~~ appropriate serving temperatures.

(d) Food shall never be used as a reward or punishment.

(e) Each municipal lockup shall keep a daily record of the number of meals served.

Statutory Authority G.S. 153A-221.

.3925 MEDICAL PLAN

(a) A written medical plan shall be developed in compliance with G.S. 153A-225 and it shall be available for ready reference by municipal lockup personnel. The medical plan shall include a description of the health services available to inmates.

(b) The written plan shall include policies and procedures that address the following areas:

- (1) Health screening of inmates upon admission;
- (2) Routine medical care;
- (3) The handling of inmates with chronic illnesses or known communicable diseases or conditions;
- (4) Administration, dispensing and control of prescription and non-prescription medications;
- (5) Handling emergency medical problems, including but not limited to emergencies involving dental care, chemical dependency, pregnancy and mental health;
- (6) Maintenance and confidentiality of medical records; and
- (7) Privacy during medical examinations and conferences with qualified medical personnel.

(c) ~~Inmate health complaints must be solicited daily by a health professional or by an officer. Inmates must be provided an opportunity each day to communicate their health complaints to a health professional or to an officer.~~ Qualified medical personnel shall be available to evaluate the medical needs of inmates. A written record shall be maintained of the request for medical care and the action taken.

(d) Inmates shall not perform any medical functions in the lockup.

(e) The medical plan shall be reviewed annually.

Statutory Authority G.S. 153A-221.

.3926 HEALTH SCREENING FORM

The health screening form completed upon admission by an officer shall be available to municipal lockup officers, except for information that is legally required to be kept confidential, and a copy of the form shall be kept in any medical file that is maintained for inmates.

Statutory Authority G.S. 153A-221.

.3938 FLOORS, CEILINGS, AND WALLS

(a) ~~All floors in confinement units shall be sloped toward drains located outside of the cell areas, and the drains shall be tamper-resistant if necessary for security.~~

(b) All ceilings, walls, and floors in confinement units shall have a finished surface that is easily cleaned, nontoxic, and predominantly of light colors.

Statutory Authority G.S. 153A-221.

.3940 WINDOWS AND GLAZING

(a) Windows and window framing, including glazing, shall be made of materials necessary to provide the degree of security required for the area in which they are used.

(b) Glazing shall be diffused or obscured if it affords a view into confinement units from outside the municipal lockup.

(c) View panels shall be made of materials necessary to provide the degree of security required for the area in which they are used, and those used for confinement units shall have a minimum area of 180 square inches and permit observation of the entire unit.

(d) Natural light shall be admitted into all confinement units either directly or indirectly.

Statutory Authority G.S. 153A-221.

CHAPTER 35 - FAMILY SERVICES

SUBCHAPTER 35E - SOCIAL SERVICES BLOCK GRANT (TITLE XX)

SECTION .0100 - CONDITIONS OF ELIGIBILITY

.0106 WITHOUT REGARD TO INCOME STATUS

Individuals may be determined eligible for the following services on the basis of need for the service and without regard to their income:

- (1) adoption services;
- (2) foster care services for adults;
- (3) foster care services for children;
- (4) protective services for adults;
- (5) protective services for children;
- (6) child day care services, transportation services, and federally funded abortion and sterilization resource items of health support services funded under the Social Services Block Grant (Title XX) that are needed in conjunction with protective services may be provided without regard to income during the first 12 months that protective services are provided if such service is available in the county in which the individual lives and the agency has received a report pursuant to G.S. 7A-543 or G.S. 108A-102, has initiated protective services in accordance with program policies, and has determined that such other services are needed to support the provision of protective services;
- (7) delinquency prevention (including residential care);
- (8) employment and training support services (including transportation and resource items);
- (9) health support services (including transportation and resources for the aging, disa-

- bled or handicapped but excluding sterilization and abortion resource items);
- (10) individual and family adjustment services (including camping component);
- (11) problem pregnancy (including residential care);
- (12) community living services;
- (13) day care services for adults;
- (14) housing and home improvement services (including resource items);
- (15) in-home services: chore services; in-home aide services (levels I through IV);
- (16) in-home services: homemaker services;
- (16) (17) personal and family counseling;
- (17) (18) preparation and delivery of meals; and
- (18) (19) residential treatment for the emotionally disturbed.

Statutory Authority G.S. 143B-153(2a)b.

SECTION .0300 - SERVICE DEFINITIONS

.0312 IN-HOME AIDE SERVICES

Chore and homemaker In-home aide services are provided to enable individuals and families to remain in or return to their own homes and communities. To this end, at least one level of these services this service must be available in each geographic area.

(1) Chore Services

- (a) Primary Service. Chore services means the provision of care for persons or assistance to persons by performing home management or personal care tasks that are essential to the activities of daily living. Such tasks are performed to enable individuals to remain in their own homes when they are unable to carry out these activities for themselves and where no responsible person is available for these tasks. Chore services is provided under professional direction and only by persons who have received training for the proper performance of such tasks. Professional direction means guidance and supervision in implementing a plan of care based on individual assessment of a person's health status and particular care needs. Home management includes tasks related to maintaining the home, shopping for and preparing meals and providing essential transportation for the client. Personal care includes tasks related to physical care and feeding of clients. The specific tasks that may be performed are defined according to level of the task, supervision required and training required.

- (b) Component. At county option, non-institutional respite care may be provided to a client in the home of the client or his primary caregiver for a period of up to one week, including 24 hour care. Tasks provided are home management, personal care, and custodial supervision.

- (c) Resource Items. None.

- (d) Target Population. Individuals who are unable to carry out tasks essential to the activities of daily living, who have no responsible person available to perform these tasks, and who need this service in order to remain in their own homes. Within the target population, eligible clients shall be provided chore services in the following order of priority:

- (i) adults who need the service as part of an adult protective services plan;
- (ii) aged or disabled individuals who need the service to prevent placement in substitute care (e.g. nursing home, domiciliary home, foster home);
- (iii) aged or disabled adults who need the service to maintain self-sufficiency and prevent deterioration;
- (iv) aged or disabled individuals who can receive some needed care from others but who need the service to enable their caregivers to maintain employment or to otherwise support the caregiver's efforts to keep the person in his own home;

(2) Homemaker Services

- (a) Primary Service. Homemaker services are supportive services provided by qualified paraprofessionals who are trained, equipped, assigned, and supervised by the agency to help maintain, strengthen, and safeguard the care of children and the aging and the functioning of dependent, physically or emotionally ill or handicapped children and adults in their own homes or children in foster homes. Such services meet standards set by the North Carolina Department of Human Resources, Division of Social Services, which are based on standards of the National Homeecaring Council, Inc. These services include providing assistance in management of household budgets, planning nutritious meals, purchasing and preparing foods, and help with housekeeping duties and basic personal and health care, with focus on avoiding unnecessary and expensive institutional care. Also included are help and instruction to families and individuals in managing to live within a public assistance or other limited budget

and in consumer education generally. For families with children, these services also include the provision of temporary child care to avoid placing children away from home when parents are absent or ill, and help and instruction in sound child-rearing practices including assistance and instruction in basic care for substantially handicapped children.

(b) Components. None.

(c) Resource Items. None.

(d) Target Population. Adults and children who need help in remaining in their own homes, or who need help in maintaining, strengthening and safeguarding their functioning because of economic dependency, physical or emotional illness or handicap. Within the target population, eligible clients shall be provided homemaker services in the following order of priority:

(i) aged or disabled adults and children who need the service to avoid impending placement in substitute care (e.g. nursing home, domiciliary home, foster home); and abused or neglected adults and children who need the service as part of a protective services plan;

(ii) children who need the service as part of a plan of preventive services designed to strengthen the family and preserve the home for the child, or as a part of permanency planning to enable a child to return home from substitute care;

(iii) adults who live alone and, because of age, disability, illness or handicap, need the service to maintain self-sufficiency and prevent deterioration that may lead to placement in substitute care;

(iv) aged or disabled individuals who can receive some needed care from others but who need the service to enable their caregivers to maintain employment or to otherwise support the caregiver's efforts to keep them in their own homes.

(1) Primary Service. In-Home Aide Services are those paraprofessional services which assist individuals and children and their families with essential home management tasks, personal care tasks, or supervision, or all of the tasks in this Paragraph, to enable individuals and children and their families to remain, and function effectively, in their own homes as long as possible.

(2) Component. In-Home Aide Services may be used for the purpose of providing respite for a primary caregiver or for parents. For this purpose, In-Home Aide Services may be provided to individuals in their own

homes or in the home of their primary caregiver and to children and their families in their own homes. Respite Care may consist of any level of home management or personal care tasks.

(3) Resource Items. None.

(4) Target Population. Individuals who are unable to carry out tasks essential to the activities of daily living or the instrumental activities of daily living, or both, who have no responsible person available to perform these tasks, and who need the service in order to remain in their own homes. Children and their families who need help remaining in their own homes, or who need help in maintaining, strengthening, and safeguarding their functioning because of economic dependency, physical or emotional illness or handicap or to preserve and strengthen family functioning. Also included are children and functionally impaired individuals whose primary caregivers or parents need relief from everyday caregiving responsibilities in order for the children and impaired individuals to remain at home. Within the target population eligible clients must be served in the following order of priority:

(a) adults and children for whom the need for protective services has been substantiated and the service is needed as part of a protective services plan;

(b) adults who are at risk of abuse, neglect or exploitation and children who are at risk of abuse, neglect, or dependency;

(c) adults with extensive ADL or IADL impairment who are at risk of placement in substitute care and children who are at risk of placement in substitute care;

(d) children who need the service as part of a plan of preventive services designed to strengthen the family and preserve the home for the child, or as a part of permanency planning to enable a child to return home from substitute care; and adults with three or more ADL or IADL impairments;

(e) adults with one or two ADL or IADL impairments.

Statutory Authority G.S. 143B-153.

SUBCHAPTER 35F - FEES FOR SERVICES

.0002 SERVICES FOR WHICH FEES ARE CHARGED

Fees must be charged for the following services or resource items when these services are provided to individuals whose gross monthly income

is at or above 100 percent of the state's established income [median income printed in Volume 44, No. 27 of the Federal Register of 1979 adopted by reference according to G.S. 150B-14(b)] adjusted according to the number of persons contained in the income unit.

- ~~(1) chore services;~~
- ~~(1) (2) day care services for adults;~~
- ~~(2) (3) homemaker services; in-home aide services;~~
- ~~(3) (4) preparation and delivery of meals;~~
- ~~(4) (5) housing and home improvement resource items only; and~~
- ~~(5) (6) personal and family counseling services.~~

Statutory Authority G.S. 143B-153.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41I - PROTECTIVE SERVICES

SECTION .0100 - GENERAL

.0102 CONFIDENTIALITY: CENTRAL REGISTRY: ABUSE AND NEGLECT CASES

(a) Information submitted by county departments of social services to the central registry of abuse and neglect cases is confidential. Non-identifying statistical information and general information about the scope, nature and extent of the child abuse and neglect problem in North Carolina is not subject to this Rule of confidentiality. Unless based upon a final judgment of a court of law, the Department of Human Resources will not permit to be divulged from the central registry, the particulars of any abuse and neglect allegation and the circumstances of any child and his family.

(b) Access to the central registry of child abuse and neglect cases is restricted to:

- (1) staff of the Division of Social Services and staff of the Office of the Secretary of the Department of Human Resources who require access in the course of performing duties pertinent to management, maintenance and evaluation of the central registry and evaluation of and research into abuse and neglect cases reported in accordance with G.S. Chapter 7A, Article 44. Management of the central registry includes the provision of information on a case by division staff to a North Carolina county department of social services ~~and or to an out-of-state social services agency~~ to assure that protective services will be made available to such child and the child's family as quickly as possible to the end that such child will be

protected and that further abuse or neglect will be prevented.

- ~~(1) Non-identifying statistical information and general information about the scope, nature and extent of the child abuse and neglect problem in North Carolina is not subject to this rule of confidentiality.~~

(A) ~~(2)~~ Individuals may receive approval to conduct studies of cases in the central registry. Such approval must be requested in writing to the Director, Division of Social Services. The written request will specify and be approved on the basis of:

- (i) ~~(A)~~ an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of child abuse and neglect;
- (ii) ~~(B)~~ a description of how the study will be conducted and how the findings will be used;
- (iii) ~~(C)~~ a presentation of the individual's credentials in the area of critical investigation; and
- (iv) ~~(D)~~ a description of how the individual will safeguard information.

(B) ~~(b)~~ Access will be denied when in the judgment of the Director the study will have minimal impact on either knowledge or practice.

- (2) the county director in order to identify whether a child who is the subject of an abuse or neglect investigation has been previously reported as abused or neglected, or whether a child is a member of a family in which a child fatality due to suspected abuse or neglect during the CPS investigative period has occurred in any county in the state. Information from the central registry shall be shared with law enforcement or licensed physicians or licensed physician extenders when needed to assist the county director in facilitating the provision of child protective services to assure that the child and the child's family will receive protective services as quickly as possible so that such child can be protected and further abuse or neglect prevented. Information shared from the central registry for child abuse and neglect will be limited to:

- (A) the child's name;
- (B) the county that investigated the report;
- (C) the type of maltreatment that was reported;
- (D) the case decision;
- (E) the date of the case decision;

- (F) the type of maltreatment found; and
 (G) the relationship of the perpetrator to the victim child.
 (3) the Chief Medical Examiner's office and law enforcement in the event of child fatality and there is a need to determine if their investigation or evaluation should consider child abuse or neglect as a factor in the death. Information will be limited to that outlined in Subparagraphs (b)(2)(A) - (G) of this Rule.

Statutory Authority G.S. 7A-552; 7A-544; 143B-10; 143B-153.

SECTION .0300 - CHILD PROTECTIVE SERVICES: GENERAL

.0304 RECEIVING REPORTS AND INITIATING PROMPT INVESTIGATIONS

(g) The county director must have an internal two level review, including at a minimum the worker receiving the report and the worker's supervisor, prior to making a decision not to investigate a report of abuse or neglect.

(h) The county director must establish a process by which the person making a report of abuse or neglect may obtain a review of the agency's decision not to investigate the report. The process shall include:

- (1) informing the person that the report will not be investigated, the basis for that decision, and their right to and the procedures for obtaining such a review; and
- (2) designating the persons by whom and the manner in which such reviews will be conducted.

Statutory Authority G.S. 7A-54; 143B-154.

SECTION .0400 - COMMUNITY CHILD PROTECTION TEAMS

.0401 NATURE AND PURPOSE OF TEAM

(a) The community child protection team is a group comprised of community representatives meeting together on a regular basis to promote the development of a community-wide approach to the problem of child abuse and neglect. The community child protection team is established by the director of the county department of social services.

(b) The community child protection team shall not encompass a geographic or governmental area larger than one county. The county director of social services may establish more than one community child protection team when needed due to caseload size or to access the special expertise of existing groups.

Statutory Authority G.S. 7A-544; 143B-153.

.0402 DUTIES AND RESPONSIBILITIES OF THE TEAM

The duties and responsibilities of the team shall be as follows:

- (1) To review cases of child fatalities as defined in Rule .0409(a) of this Section. The purpose of such review shall be to identify whether gaps and deficiencies exist in the community child protection system and to assist the county director in the protection of surviving siblings;
- (2) To review selected active cases as outlined in Rule .0405 of this Section in which abuse or neglect is suspected or found. The purpose of such review shall be to assist the county director in evaluating allegations of abuse or neglect and in planning and providing services to prevent further abuse or neglect; and
- (3) To recommend and advocate for system improvements and needed resources where gaps and deficiencies exist.

Statutory Authority G.S. 7A-544; 143B-153.

.0403 COMPOSITION OF TEAM

(a) Unless the county board of commissioners appoints a chair within 30 days notice of a vacancy, the county director shall serve.

(b) The county director and a member of his staff shall participate as members of the team.

(c) The team will also consist of representatives from other human service and law enforcement agencies engaged in the provision of services to children and their families and of individuals representing the community.

- (1) Representatives to be invited by the county director to participate shall include but not be limited to the following:

- (A) local law enforcement;
- (B) the District Attorney's office;
- (C) the medical profession;
- (D) the local community action agency, as defined by the Division of Economic Opportunity;
- (E) school personnel;
- (F) a county social services board member; and
- (G) a local mental health professional.

- (2) At their option, the board of county commissioners may designate up to five representatives of agencies or of the community at large to be invited by the county director.

Statutory Authority G.S. 7A-544; 143B-153.

.0404 DUTIES AND RESPONSIBILITIES OF THE CHAIR

(a) The chair and county director together shall schedule meetings, including time and place, and prepare the agenda.

(b) Within three months prior to, or after, assuming the chairmanship, the chair shall participate in training developed by the Division of Social Services. Such training shall address the role and function of the child protection team, confidentiality requirements, an overview of child protective services law and policy, and team record keeping.

Statutory Authority G.S. 7A-544; 143B-153.

.0405 DUTIES OF THE COUNTY DIRECTOR OF SOCIAL SERVICES

Whether selected to serve as chair of the community child protection team, or not, the county director shall perform the following duties:

- (1) with the exception of those members designated by the board of county commissioners, appoint community child protection team members and fill vacancies as they occur;
- (2) assure the development of written operating procedures for each team to include composition of membership, frequency of meetings, confidentiality policies, training of members and duties and responsibilities of members;
- (3) distribute copies of the written procedures to the administrator of all agencies represented on the team as well as to each team member;
- (4) assure that the team defines the categories of cases that will be subject to review by the team;
- (5) determine the cases in these categories on which he will initiate a review and bring for review any case requested by a team member;
- (6) report quarterly to the county board of social services, or as required by the Board, on the activities of the team; and
- (7) assure that the team meets within 45 days of the effective date of these Rules.

Statutory Authority G.S. 7A-544; 143B-153.

.0406 RESPONSIBILITY FOR TRAINING OF TEAM MEMBERS

The Division of Social Services shall develop and make available for the team members on an on-going basis, training materials described in Rule .0404(c) of this Section.

Statutory Authority G.S. 7A-544; 143B-153.

.0407 FREQUENCY OF MEETINGS

Community child protection team meetings shall be scheduled with sufficient frequency to review defined cases selected for review but not less than once per quarter.

Statutory Authority G.S. 7A-544; 143B-153.

.0408 RECORDS

(a) No community child protection team member will retain or maintain any records pertaining to individual clients.

(b) The county director shall maintain lists of participants for each team meeting and confidentiality statements signed by the team members and any invited participants. Such records will be maintained according to the standard administrative record retention schedule.

(c) Cases receiving child protective services at the time of review shall have an entry in the child's protective services record to indicate that the case was reviewed by the team.

Statutory Authority G.S. 7A-544; 132-1; 132-3; 143B-153.

.0409 CASES SUBJECT TO REVIEW BY THE COMMUNITY CHILD PROTECTION TEAM

(a) Each team shall review cases in which a child died as a result of suspected abuse or neglect and a report of abuse or neglect had been made about the child or his family to the county department of social services within the previous 12 months or the child or his family were recipients of child protective services within the previous 12 months.

(b) Each team shall review other cases in accordance with Rule .0405(4) and (5) of this Section.

Statutory Authority G.S. 7A-544; 143B-153.

.0410 CONFIDENTIALITY

(a) The county director is authorized to share with the community child protection team any information available to him that is needed by the team in the execution of their duties as defined by Rule .0402 of this Section.

(b) Each team member and invited participant shall sign a statement indicating their understanding of and adherence to confidentiality requirements including the possible civil or criminal consequences of any breach of confidentiality.

(c) Members of the team who have access to client information and fail to comply with the rules in this Section shall be denied access to confidential information and subject to dismissal from the team.

(d) Any invited participant who is given access to client information during the team review and fails to comply with the rules in this Section shall be denied future participation in team reviews.

(e) The county director shall not share any information which discloses the identity of individuals who have reported suspected abuse or neglect to the county department of social services.

Statutory Authority G.S. 7A-544; 108A-80; 143B-153.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2300 - SERVICES

.2305 OTHER PERSONAL SERVICES

(a) Transportation. The administrator must provide or arrange for the resident's transportation assure the provision of transportation for the residents to necessary resources and activities, including transportation to the nearest appropriate health facilities, social services agencies, shopping and recreational facilities, and religious activities of the resident's choice. The resident is not to be charged any additional fee for this service. Sources of transportation may include community resources, public systems, volunteer programs, family members as well as facility vehicles.

Statutory Authority G.S. 131D-2; 143B-153.

SECTION .2700 - MEDICAL POLICIES

.2703 MANAGEMENT OF DRUGS

The administrator is responsible for establishing and implementing procedures for the use of drugs by residents in the home that are in accordance with the requirements presented in this Section. The administrator must consult with a pharmacist, physician, public health nurse, or other registered nurse in establishing these procedures.

(3) Labeling of Drugs.

(b) The container label of each prescription drug must include the following information:

(iv) the directions for use clearly stated and not abbreviated. When the prescriber's directions change or the label becomes illegible, the container must be relabeled at the refilling of the drug and not longer than 60 days;

(4) Administration of Drugs.

(e) When self-administration has not been ordered, ~~the drugs are to be given to the resident by the administrator or other staff who are designated and determined by the administrator to be capable and appropriately trained.~~ The administrator will determine staff capable of preparing and administering drugs. Staff designated to prepare and administer drugs will be trained by the administrator or other experienced staff. Training materials will consist of this Rule and the home's procedures for the use of drugs by residents. Designated staff in training will be observed by the administrator or other experienced staff while preparing and administering drugs until the staff in training has demonstrated, by performance, capability in these specific assigned tasks. The responsibility for the administration of drugs to residents by the home must be delegated by a licensed physician, a licensed dentist or a registered nurse. staff who give drugs to residents must be competent and trained to prepare and administer medications. The administrator is responsible for determining staff capability and assuring the provision of training which must at least consist of demonstrated ability to apply these Rules in this Section and the home's drug administration procedures.

(h) A ~~record~~ Medication Administration Record (MAR) of all drugs given to each resident must be kept current, recorded before the next administration, indicating each dose given and is to include the following:

- (i) resident's name;
- (ii) name, strength, and quantity of the drug;
- (iii) instructions for giving drug;
- (iv) date and time drug is administered; and
- (v) name or initials of person giving the drug. If initials are used, a signature equivalent to those initials is to be entered on this record.

Statutory Authority G.S. 131D-2; 143B-153.

SUBCHAPTER 42D - LICENSING OF HOMES
FOR THE AGED AND INFIRM

SECTION .1400 - PERSONNEL

.1407 STAFFING

(d) Homes with capacity or census of 13-20 must comply with the following staffing. When the home is staffing to census and the census falls below 13 residents, the staffing requirements for a home with 12 or fewer residents will apply.

(2) When the administrator or supervisor-in-charge is not on duty within the home, there must be at least one staff member on duty on the first, second and third shifts; ~~Since the staff member on the third shift is on duty, there is no required call system for use by the residents;~~

(e) Homes with capacity or census of 21 or more must comply with the following staffing. When the home is staffing to census and the census falls below 21 residents, the staffing requirements for a home with a census of 13-20 will apply.

(3) The following describes the nature of the aide's duties, including allowances and limitations:

(B) Any housekeeping performed by an aide between the hours of 7 a.m. and 9 p.m. is to be limited to occasional, non-routine tasks, such as wiping up a water spill to prevent an accident, attending to an individual resident's soiling of his bed, or helping a resident make his bed. Routine bed-making is a permissible aide duty;

Statutory Authority G.S. 131D-2; 143B-153.

SUBCHAPTER 42H - IN-HOME AIDE
SERVICES

SECTION .0200 - SERVICE DESCRIPTION;
DEFINITIONS

.0203 DEFINITIONS (REPEALED)

Statutory Authority G.S. 143B-10; 143B-153.

SECTION .0400 - SERVICE PROVISION AND
CLAIMS FOR REIMBURSEMENT

.0401 GENERAL POLICY (REPEALED)

Statutory Authority G.S. 143B-153.

SECTION .0800 - COORDINATION WITH THE
DIVISION OF AGING

.0801 IN-HOME AIDE SERVICES FOR

OLDER ADULTS

The rules in 10 NCAC 22J and Rule .0914 of this Subchapter shall apply for the provision of In-Home Aide Services for Older Adults with any allocation received by county departments of social services from the Division of Social Services.

Statutory Authority G.S. 143B-153.

SECTION .0900 - PROGRAM REQUIREMENTS

.0901 IN-HOME AIDE SERVICES FOR
ADULTS AND CHILDREN AND THEIR
FAMILIES

As described in this Subchapter, Rules .0902 through .0914, shall apply for the provision of In-Home Aide Services for Adults and Children and Their Families with any allocation received by county departments of social services from the Division of Social Services.

Statutory Authority G.S. 143B-153.

.0902 DEFINITIONS

As used in this Subchapter and in 10 NCAC 35E .0312 In-Home Aide Services the following terms have the meanings specified:

- (1) "Activities of Daily Living (ADL)" include eating, dressing, bathing, toileting, bowel and bladder control, transfers, ambulation and communication such as speaking, the written word, signing, gestures, communication devices.
- (2) "Adult" means 18 to 59 years of age.
- (3) "Available Person" is someone who lives with or near the client, who has the time and is willing to perform the needed services.
- (4) "Child" means under 18 years of age.
- (5) "Disabled" means unable to engage in any substantial activity necessary for self-care or self-support by reason of a medically determined physical or mental impairment.
- (6) "Home Management" includes tasks that range from basic housekeeping, shopping, and essential transportation to intensive work with individuals and children and their families on budgeting and family management.
- (7) "Instrumental Activities of Daily Living (IADL)" includes meal preparation, medication intake, cleaning, money management, phone use, laundering, reading, writing, shopping and going to necessary activities.
- (8) "Medically Stable" means physical or mental adaptation to previously recognized health problems with effective maintenance

by diet, medication, routine physical exercise, or a combination of these remedies.

- (9) "Medically Unstable" means a recent acute illness or complications of a chronic condition that are not physically or mentally controlled by diet, medication, or physical exercise and which require frequent monitoring and testing by skilled professionals.
- (10) "Own Home" means that the service recipient is living in a residence he maintains for himself or is maintained for him. "Own home" does not include any group care setting. For children and their families own home also means a family foster home licensed by the North Carolina Department of Human Resources to provide care for children and supervised by a county department of social services or licensed child-placing agency.
- (11) "Personal Care" includes tasks that range from assistance with basic personal hygiene and grooming, feeding, and ambulation to medical monitoring and other health care related tasks.
- (12) "Primary Caregiver" is the person who voluntarily provides the most care or assumes the most responsibility for another person.
- (13) "Respite Care" is a component of In-Home Aide Services which provides needed relief to primary caregivers or parents of persons who cannot be left alone because of mental or physical problems or the need for care and supervision.
- (14) "Responsible Person" is someone who is dependable and capable of performing the needed services for the client.
- (15) "Review" means a regular contact by an appropriate professional with the individual or family or both to note progress, maintenance or deterioration, changes in circumstances, and adequacy of the In-Home Aide Service Plan in meeting the person's and family's needs, and to make any needed adjustments.

Statutory Authority G.S. 143B-153.

.0903 DESCRIPTION OF IN-HOME AIDE SERVICE LEVELS FOR ADULTS

As used in this Subchapter, the following descriptions of In-Home Aide Service levels shall apply for adults:

- (1) Level I - Home Management. In-Home Aide Services at this level are intended to provide support to individuals and their families who require assistance with basic home management tasks, such as house-

keeping, cooking, shopping, and bill paying. Clients to be served include those who are self-directing, medically stable, and who have at least one instrumental activity of daily living (IADL) impairment. Personal care tasks may not be performed at this level.

- (2) Level II - Home Management and Personal Care. In-Home Aide Services at this level are intended to provide support to individuals and their families who require assistance with basic activities of daily living and home management tasks. Both the home management and assistance with personal care tasks can be provided to the client when his capacities are diminishing or when the client is striving to maintain or improve his own functioning. Clients to be served include those who are medically stable and partially dependent in carrying out one or two activities of daily living (ADL) due to physical or mental impairments, or both; or who have maintenance needs or rehabilitative potential, or both. In addition to their personal care needs, clients may also require assistance with IADL activities to improve IADL functioning or to learn independent living skills; or they may have two to four IADL needs requiring additional support to maintain or achieve overall functioning.
- (3) Level II - Home Management Only. In-Home Aide Services at this level are intended to provide support to individuals and their families who require assistance with home management tasks and do not require assistance with personal care. Provision of home management tasks focuses more on strengthening and developing the individual's own skills rather than on doing these tasks for him. Clients to be served include those who need assistance to remain in their own homes; or who need assistance to maintain, strengthen, and safeguard their functioning because of physical or emotional illness or handicap.
- (4) Level III - Home Management. In-Home Aide Services at this level are intended to provide intensive education and support to individuals and their families in carrying out home management tasks and improving family functioning skills. Provision of the service primarily focuses on individualized work with a client and his family in teaching and demonstrating skills and tasks and reinforcing improved client and family accomplishments. It also involves direct care and support in crisis situations. Clients to be served generally have moderate to severe

limitations in cognitive or psycho-social functioning, but have potential for partial or total independence in IADL or home management functioning, or both. Some clients may have more than four IADL impairments.

- (5) Level III - Personal Care. In-Home Aide Services at this level are intended to provide substantial ADL support to individuals who require assistance with health or personal care tasks, or both. Provision of these tasks involves extensive "hands on" care and potential assistance with a wide range of health related conditions. Clients to be served include those who are medically stable with significant ADL impairments (three or more) resulting from a chronic condition; or who are medically stable with significant ADL impairments, but have rehabilitative potential; or who are medically unstable due to recent illness, complications of a chronic condition, or a deteriorating condition with variable ADL and IADL needs.
- (6) Level IV - Home Management. In-Home Aide Services at this level are intended to provide a wide range of educational and supportive services to individuals and their families who are in crisis or who require long term assistance with complex home management tasks and family functioning skills. Provision of the service involves quick and creative response to individual and family crisis situations identified by the case manager; it also focuses on appropriate learning sessions with small groups of persons from different families who have similar needs. Clients to be served include those who have serious limitations in cognitive or psycho-social functioning, or both, but who have the potential for major or complete independence in IADL functioning and who have little or no ADL impairment.

- (2) Level II - Home Management and Personal Care. In-Home Aide Services at this level are intended to provide support to children and their families who require assistance with basic personal care and home management tasks. Both the home management and assistance with personal care tasks can be provided to families when their capacities are diminishing or when the family is striving to maintain or improve family functioning.

- (3) Level II - Home Management Only. In-Home Aide Services at this level are intended to provide support to children and their families who require assistance with home management tasks and do not require assistance with personal care. Provision of home management tasks focuses more on strengthening and developing the family's own skills rather than on doing these tasks for them. Children and their families to be served include those who need assistance to remain in their own homes; or who need assistance to maintain, strengthen, and safeguard their functioning because of physical or emotional illness or handicap or to preserve and strengthen family functioning; or who need assistance to obtain education, training, and employment to improve their economic self-sufficiency.

- (4) Level III - Home Management. In-Home Aide Services at this level are intended to provide intensive education and support to children and their families in carrying out home management tasks and improving family functioning skills. Provision of the service primarily focuses on individualized work with a family in teaching and demonstrating skills and tasks and reinforcing improved family accomplishments. It also involves direct assistance and support in crisis situations.

- (5) Level III - Personal Care. In-Home Aide Services at this level are intended to provide substantial support to children and their families who require assistance with health or personal care tasks, or both. Provision of these tasks involves extensive "hands on" care and potential assistance with a wide range of health related conditions.

- (6) Level IV - Home Management. In-Home Aide Services at this level are intended to provide a wide range of educational and supportive services to children and their families who are in crisis or who require long term assistance with complex home management tasks and family functioning skills. Provision of the service involves quick and

Statutory Authority G.S. 143B-153.

**.0904 DESCRIPTION OF IN-HOME AIDE
SVC LEVELS/CHILDREN AND THEIR
FAMILIES**

As used in this Subchapter, the following descriptions of In-Home Aide Service levels shall apply for children and their families:

- (1) Level I - Home Management. In-Home Aide Services at this level are intended to provide support to children and their families who require assistance with basic home management tasks, such as housekeeping, cooking, shopping, and bill paying.

creative response to family crisis situations identified by the case manager; it also focuses on appropriate learning sessions with small groups of persons from different families who have similar needs.

Statutory Authority G.S. 143B-153.

.0905 SERVICE DELIVERY

In-Home Aide Services must be provided in accordance with the standards established in Rules .0903, .0904, .0906, and .0910 of this Section for task levels, competency requirements, supervision, and quality assurance requirements regardless of whether the aide performing the tasks is a paid employee or a volunteer under the supervision of an established agency.

Statutory Authority G.S. 143B-153.

.0906 ASSESSMENT AND REASSESSMENTS

(a) The purpose of the initial assessment and regular reassessments is to determine each individual's or family's level of functioning and determine or confirm the need for In-Home Aide Services.

(b) The initial assessment and reassessments must be conducted by an appropriate professional and are prerequisites to providing In-Home Aide Services.

(c) An initial assessment is not a prerequisite when the health, safety, or well-being of an individual or family is at risk. In these instances the initial assessment must be completed within five working days of the onset of services.

(d) The initial assessment and reassessment must be conducted in the individual's or family's home and must address the mental, social, environmental, economic, and physical health status of the individual or family, as well as an individual's ability to perform activities of daily living (ADL's) and instrumental activities of daily living (IADL's).

(e) The initial assessment and reassessments must be signed and dated by the professional responsible for assuring the completion of the initial assessment and reassessments.

(f) An initial assessment must be completed prior to the professional's development of an In-Home Aide Service Plan.

(g) A full reassessment must be completed at least every 12 months or as the individual's or family's situation warrants.

(h) A review of the individual's or family's situation must be completed by an appropriate professional at least quarterly. If a reassessment is conducted, it meets the requirements for a quarterly review.

(i) If the individual or family needs Home Management tasks at Level I or II, the initial assessment and reassessments must be completed by a social worker or other appropriate professional, such as a registered nurse and registered dietitian. If a registered nurse or dietitian is conducting the initial assessment or reassessment at Level I or II, and the individual's or family's social needs appear more extensive than the assessor is able to adequately evaluate, then a social worker must be consulted for further input. If the individual or family needs Home Management tasks at Level III or IV, the initial assessment and reassessments must be completed by a social worker.

(j) If the individual or family needs Personal Care tasks at Level III, a registered nurse must complete the physical health status and the ADL portions of the initial assessment and reassessments. For Level II Personal Care tasks, if a social worker or registered dietitian is conducting the initial assessment or reassessment and the individual's or family's personal care needs appear more extensive than the assessor is able to adequately evaluate, then an appropriate health professional must be consulted for further input.

Statutory Authority G.S. 143B-153.

.0907 IN-HOME AIDE SERVICE PLAN

(a) Each individual must have an In-Home Aide Service Plan which is based on the initial assessment and regular reassessments.

(b) The In-Home Aide Service Plan must include:

- (1) Measurable client outcome goals;
- (2) In-Home Aide Service level or levels to be provided;
- (3) Specific tasks to be performed;
- (4) Frequency of service provision;
- (5) Anticipated duration of the service; conditions for continuing or discontinuing service;
- (6) Signature of agency's professional staff developing the service plan;
- (7) A physician's signature, if required by a specific funding source.

(c) All changes in tasks must be documented and dated on the In-Home Aide Service Plan by the responsible professional.

(d) Children and their families must have a plan that is consistent with the family's services plan to prevent family disruption and unnecessary out-of-home placement of children.

Statutory Authority G.S. 143B-153.

.0908 COMPETENCY REQUIREMENTS

(a) Aides who provide In-Home Aide Services must meet the competency requirements for the level of service they are regularly required to perform. Meeting competency requirements includes a correct demonstration of the tasks to an appropriate professional. In addition, an aide performing any tasks in Level III Personal Care must be listed on the Nurse Aide Registry with the NC Board of Nursing.

(b) The agency employing the in-home aides must maintain documentation of each aide's competence; this includes verification of knowledge of all content areas and ability to correctly perform all tasks at the level of service regularly provided. If the aide is required to perform selective tasks at a higher level, documentation of competence in the specific tasks is also required. If the aide is required to perform tasks at Level III - Personal Care, the individual must be listed on the Nurse Aide Registry with the NC Board of Nursing. An aide must be fully competent at the current level of service provision before being assigned tasks at a higher level.

(c) By December 1, 1991, regardless of the level of service to which the aide is assigned, demonstrated competence for the specific tasks assigned to that aide must be documented before allowing the aide to perform the tasks independently.

(d) Competency requirements for all levels except Level III Personal Care are applicable on July 1, 1993 for all persons hired after that date. All aides performing any Level III Personal Care tasks must be listed on the Nurse Aide Registry with the NC Board of Nursing by January 1, 1991 or within four months of being employed to perform these tasks. Each service provider agency is responsible for ensuring that competency testing is appropriately administered.

(e) Each service provider agency is responsible for insuring that its aides have sufficient training to pass a competency test for the level of service the aides will regularly provide.

(f) In the event that a spouse, parent, child or sibling is paid to provide care, the service provider agency can make a determination that the family member is capable of providing the care needed without requiring any formal training. The family member must demonstrate competence to perform the tasks needed by the client to an appropriate professional. When the family member provides Personal Care at Level III, he must be listed on the Nurse Aide Registry with the NC Board of Nursing within four months of being employed to perform these tasks.

(g) Demonstration of competence in the presence of an appropriate professional can take place in a variety of settings including, but not

limited to, the classroom, laboratory, local agency, or the home of the client and family.

Statutory Authority G.S. 143B-153.

.0909 TIME FRAMES FOR COMPLETING COMPETENCY REQUIREMENTS

The following time frames for completing competency requirements for each level of In-Home Aide Services shall apply:

- (1) Level I. Competency requirements consist of demonstration of the knowledge and skills required to carry out the functions described in Rules .0903(1) and .0904(1) of this Section. Competency requirements for Level I must be met within one year of employment as a Level I aide.
- (2) Level II. Competency requirements consist of demonstration of the knowledge and skills required to carry out the functions described in Rules .0903(2) or (3) and .0904(2) or (3) of this Section. Competency requirements for Level II must be met within one year of employment as a Level II aide.
- (3) Level III. This level is tracked for either Home Management or Personal Care and shall consist of the following competency requirements:
 - (a) Home Management Track. Competency requirements consist of demonstration of the knowledge and skills required to carry out the functions described in Rules .0903(4) and .0904(4) of this Section. Competency requirements for Level III Home Management must be met within one year of employment at this level.
 - (b) Personal Care Track. Competency requirements consist of demonstration of the knowledge and skills required to carry out the functions described in Rules .0903(5) and .0904(5) of this Section and registration as a Nurse Aide I with the NC Board of Nursing. Aides performing Level III Personal Care tasks must complete training or competency testing, or both within four months of employment at this level.
- (4) Level IV. Competency requirements consist of demonstration of the knowledge and skills required to carry out the functions described in Rules .0903(6) and .0904(6) of this Section. Competency requirements for Level IV must be met within one year of employment as a Level IV aide.

Statutory Authority G.S. 143B-153.

.0910 AIDE SUPERVISION

(a) It is the responsibility of the agency providing the In-Home Aide Service to assure that supervision is given to all aides.

(b) Regardless of the level of tasks performed, supervisory home visits must be made at least twice during the first month of the aide's employment.

(c) Following the first month of the aide's employment, supervisory home visits must be made as follows:

- (1) Level I - at least quarterly;
- (2) Level II - at least quarterly;
- (3) Level III - at least every 60 days;
- (4) Level IV - at least every 60 days.

(d) The frequency of aide supervision must be increased as needed to respond to the capabilities of the aide and the needs of the client.

(e) Each service provider agency must assure at least some portion of the supervisory visits occur when the aide is providing assistance or care to clients.

Statutory Authority G.S. 143B-153.

.0911 SELECTION OF AIDES

(a) The following persons shall be allowed to serve as in-home aides for adults:

- (1) Non-relatives who are 18 years of age or older who are qualified to perform the tasks needed by the client.
- (2) Relatives of the client, who for this purpose are parent, spouse, child or sibling, who are 18 years of age or older and who give up employment or the opportunity for employment in order to perform the service and who are qualified to perform the tasks needed by the client.

Note: Persons who cannot serve as in-home aides are those under 18 years of age; those who are not qualified to perform the tasks needed by the client; and those who are relatives of the client, who for this purpose are parent, spouse, child, or sibling, who are unemployed or who do not have to give up employment in order to provide the service.

(b) Non-relatives who are 18 years of age or older who are qualified to perform the tasks needed by the client shall be allowed to serve as in-home aides for children and their families.

Statutory Authority G.S. 143B-153.

.0912 CLIENT RECORDS

Records must be kept for each In-Home Aide Services client and must include:

- (1) Documentation of request or authorization for services;
- (2) A copy of the completed initial assessment;

- (3) Copies of all completed reassessments;
- (4) Copies of the initial and any revised In-Home Aide Service Plans;
- (5) Documentation of significant client information;
- (6) Documentation of client eligibility;
- (7) Documentation of quarterly reviews;
- (8) Documentation notifying client of service reduction, denial or termination.

Statutory Authority G.S. 143B-153.

.0913 QUALITY ASSURANCE REQUIREMENTS

(a) All agencies providing In-Home Aide Services must be either licensed by the Department of Human Resources as a home care agency, or be certified or accredited through one of the following accreditation organizations, or other entities recognized by the Department of Human Resources or the North Carolina Medical Care Commission:

- (1) North Carolina Accreditation Commission for In-Home Aide Services;
- (2) National HomeCaring Council;
- (3) Joint Commission on Accreditation of HealthCare Organizations (Home Care accreditation);
- (4) National League for Nursing.

(b) Licensure by the Department of Human Resources is required by July 1, 1992 for agencies providing In-Home Aide Services at Level II - Home Management and Personal Care, Level III - Personal Care, or both. If the agency is certified or accredited as described in Paragraph (a) of this Rule, then the agency shall be given deemed status for licensure.

(c) Certification or accreditation by one of the accreditation organizations described in Paragraph (a) of this Rule is required by July 1, 1996 for agencies providing In-Home Aide Services at Level I - Home Management, Level II - Home Management Only, Level III - Home Management, Level IV - Home Management, or any combination thereof. If the agency is licensed as a home care agency by the Department of Human Resources then certification or accreditation shall not be required.

Statutory Authority G.S. 143B-153.

.0914 METHODS OF SERVICE PROVISION

(a) One or more of the methods of service provision enumerated in this Paragraph shall be used to provide In-Home Aide Services.

- (1) Direct Provision. County departments of social services may employ in-home aide services providers as members of their staff to perform tasks in accordance with

10 NCAC 35E .0312 and the rules of this Subchapter. In-home aide services providers are subject to the provisions of the State Personnel Act and to applicable personnel policies of the county in which they are employed. Responsibility for the selection, training, assignment to the clients, supervision and discharge of in-home aide services providers rests with the county department of social services.

- (2) Cash Payment. In-Home Aide Services may be provided through a cash payment made to an eligible client as reimbursement for services he has received and for which he has paid. County departments of social services may make cash advances to eligible clients but may not claim reimbursement from any federal or state funds until a receipt is provided by the client documenting that the service has been delivered and paid for. The cash payment method of provision is utilized only in accordance with the following arrangement:

(A) The client, or a person designated by the client, is capable and willing to be responsible for hiring, firing and supervising the In-Home Aide Services provider and for carrying out other applicable employer-related responsibilities.

(B) The tasks performed by the provider do not require supervision by a registered nurse or another professional with skills appropriate to the tasks being performed for the client.

(C) The client, or a person designated by the client, provides certification that the provider meets the competency requirements for the level of tasks provided.

- (3) Purchase of Service Contract. In-Home Aide Services may be purchased from another agency under a purchase of service contract in accordance with rules set forth in 10 NCAC 36.

(b) Regardless of the method of service provision, the amount of service provided to each client will be based on individual need.

Statutory Authority G.S. 143B-153.

SUBCHAPTER 42P - CHORE SERVICES

SECTION .0100 - SERVICE DESCRIPTION

.0102 TRAINING REQUIREMENTS (REPEALED)

Statutory Authority G.S. 143B-153.

SECTION .0200 - DEFINITIONS

.0201 DEFINITIONS (REPEALED)

Statutory Authority G.S. 143B-153.

SECTION .0400 - SERVICE PROVISION: MAXIMUM ALLOWANCE OF PAYMENT

.0401 GENERAL POLICY (REPEALED)

.0402 DIRECT PROVISION (REPEALED)

.0403 CASH PAYMENT METHOD (REPEALED)

.0404 PURCHASE OF SERVICE CONTRACT (REPEALED)

Statutory Authority G.S. 143B-153.

SUBCHAPTER 42Q - STATE IN-HOME SERVICES FUND

.0011 NATURE AND PURPOSE OF STATE IN-HOME SERVICES FUND

(a) The State In-Home Services Fund is used for ~~five~~ four services provided through county departments of social services for the purpose of enabling people to remain in or return to their own homes. These services are: ~~chore services~~, day care services for adults, ~~homemaker~~ in-home aide services, housing and home improvement services, and preparation and delivery of meals.

(b) The fund is used for increasing state financial participation in the costs of these services.

Statutory Authority G.S. 143B-153.

.0012 DEFINITIONS OF SERVICES

Definitions of the ~~five~~ four services are the same as the definitions of these services under the Social Services Block Grant (Title XX), codified in 10 NCAC 35E .0300.

Statutory Authority G.S. 143B-153.

.0013 ELIGIBILITY

(a) Eligibility for the ~~five~~ four services is based on Social Services Block Grant (Title XX) eligibility criteria codified in 10 NCAC 35E.

(b) Application for the services is made to the department of social services in any county providing the services.

(c) Eligibility for the services is determined by the county department of social services.

Statutory Authority G.S. 143B-153.

.0014 FEES

Fees for the following services provided under the State In-Home Services Fund shall be determined in accordance with policies governing fees for services, codified in 10 NCAC 35F: ~~chore~~

~~services, day care services for adults, homemaker in-home aide services, preparation and delivery of meals and housing and home improvement resource items only.~~

Statutory Authority G.S. 143B-153.

.0015 PROGRAM POLICIES AND STANDARDS

The ~~five~~ four services are provided in accordance with the policies, procedures and standards set out for each of them in 10 NCAC 42E or 42Z as applicable, 42H, 42K, ~~42P~~, 42S, and 42T.

Statutory Authority G.S. 143B-153.

**SUBCHAPTER 42V - PROTECTIVE SERVICES
FOR ADULTS**

**SECTION .0200 - ACCEPTANCE AND
EVALUATION OF PROTECTIVE SERVICES
REPORTS**

.0201 ACCEPTANCE OF REPORTS

(a) The county department of social services must accept all reports alleging ~~a~~ an abused, neglected, or exploited disabled adult is in need of protective services. This includes anonymous reports. If the county department determines that the address of the disabled adult given in the report is in another county, the department shall refer the person making the report to the appropriate county department. The county department receiving the original report shall follow up to make sure the appropriate county has received the report.

(b) The department of social services shall make arrangements for 24 hour coverage to receive calls and take appropriate action.

Statutory Authority G.S. 108A-103; 143B-153.

**.0208 CONDUCTING A THOROUGH
EVALUATION**

A thorough evaluation of the protective services report shall include identifying indicators of abuse, neglect, or exploitation and the disabled adult's strengths and limitations by assessing the following functional areas:

- (1) physical health;
- (2) mental health;
- (3) social support;
- (4) activities of daily living and instrumental activities of daily living;
- (5) financial support; and
- (6) physical environment.

Statutory Authority G.S. 108A-103; 143B-153.

.0209 SUBSTANTIATION OF THE REPORT

(a) Following completion of the evaluation a determination shall be made as to whether the report is substantiated.

(b) A report is substantiated when:

- (1) the adult is determined to be disabled as defined in G.S. 108A-101(d);
- (2) the adult is determined to be abused, neglected or exploited as defined in G.S. 108A-101(a)(j) or (m); and
- (3) the adult is determined to be in need of protective services as defined in G.S. 108A-101(e).

(c) A report is unsubstantiated if any one of the three conditions in Subparagraphs (b)(1), (2), and (3) of this Rule are not met.

Statutory Authority G.S. 108A-103; 143B-153.

**SECTION .0500 - RESIDENTIAL CARE
FACILITIES**

.0501 GENERAL REQUIREMENT

(a) In accordance with provisions of G.S. 108A-103 and the rules in Section .0200 of this Subchapter, the department of social services in the county in which the facility is located shall evaluate reports of abused, neglected, or exploited disabled adults in need of protective services who are specifically named patients or residents of skilled nursing, combination, and residential and intermediate care facilities. homes for the aged and disabled, family care homes and group homes for developmentally disabled adults. This includes reports regarding patients or residents who are placed from other counties.

(b) Complaints received by the county department of social services regarding general conditions or violations of standards in skilled nursing and intermediate care combination facilities and residential care facilities licensed under G.S. 122C shall be referred to the Division of Facility Services.

(c) Complaints received by the county department of social services regarding general conditions or violations of standards in homes for the aged and disabled, family care homes and group homes for developmentally disabled adults residential care facilities licensed under G.S. 131D-2 shall be followed up by the adult home specialist in accordance with the specialist's ongoing responsibility for supervision of these facilities.

Statutory Authority G.S. 143B-153.

.0502 NOTICE TO ADMINISTRATOR

(a) The county director will not inform the administrator prior to the first visit to the facility that a protective services report has been re-

ceived, except in specific instances where the county director thinks the assistance of the administrator will be needed in conducting the evaluation.

(b) The county director shall provide the administrator of ~~the~~ a nursing, combination, or residential care facility with a written summary of the nature of the protective services report, whether or not evidence of abuse, neglect or exploitation was found, and whether or not a need for protective services was substantiated. The written summary to the administrator shall be limited to the following:

- (1) acknowledgement that a protective services report was received on a specified patient or resident of the facility;
- (2) the specific ~~complaint alleged~~ allegations in the report (the complainant shall not be named);
- (3) whether or not ~~the complaint was substantiated~~ evidence of abuse, neglect or exploitation was found;
- (4) whether or not the need for protective services was substantiated;
- (5) ~~(4) if the complaint was substantiated~~, a general statement as to how the conclusion was reached (the names of persons who were contacted during the evaluation to obtain information shall not be given).

Statutory Authority G.S. 143B-153.

.0503 REPORT TO REGULATORY AGENCIES

(a) A copy of the written report required by Rule .0901 of this Subchapter shall be sent to the Division of Facility Services, within 30 days of completion of the evaluation. If the identity of the person making the protective services report ~~is~~ and the names of individuals who provide information about the disabled adult are needed by the Division of Facility Services in order to carry out an investigation, that information shall be shared verbally with the Division on request.

(b) When evidence of financial exploitation is found in Medicaid - funded facilities, the county department of social services shall send a copy of the written report to the Division of Medical Assistance, as well as to the Division of Facility Services.

(c) When, in the course of an evaluation, evidence of abuse, neglect or exploitation is found, the county director shall notify the Division of Facility Services immediately by telephone. In addition the county director shall inform the Division of Facility Services as to whether or not the need for protective services will be substantiated.

(d) When, in the course of an evaluation, it appears that a report of a need for protective services will not be substantiated, but the county director finds violations of licensure standards, such violations shall be reported immediately to the appropriate supervisory agency. Reports of violations of standards in nursing ~~homes~~ and combination ~~homes~~ facilities and residential ~~care facilities~~ licensed under G.S. 122C shall be made to the Division of Facility Services. Reports of violations of standards in ~~domiciliary homes~~ residential care facilities licensed under G.S. 131D-2 shall be made to the adult home specialist in the county department of social services.

Statutory Authority G.S. 143B-153.

.0504 INTER-COUNTY COORDINATION

The department in the county in which a nursing, combination, or residential care facility is located has primary responsibility for providing protective services to adults in that facility. That department shall notify the department in the adult's county of residence when a protective services report on the adult is substantiated and shall inform the department in the county of residence of the plan for protective services. The department in the county of residence shall cooperate and assist to the extent possible in the provision of protective services.

Statutory Authority G.S. 143B-153.

SECTION .0800 - CONFIDENTIALITY

.0802 IDENTITY OF COMPLAINANT

The identity of the complainant and of individuals who provide information about the disabled adult shall be kept confidential unless the court requires that such persons' ~~identity~~ identities be revealed with the exception that the complainant's name and the names of individuals who provide information about the disabled adult may be given verbally to the Division of Facility Services when requested by that agency in order to carry out its investigation.

Statutory Authority G.S. 143B-153.

.0805 RELEASE OF SPECIFIC FINDINGS TO OTHER GOVERNMENTAL AGENCIES

Federal, state, and law enforcement agencies may be sent copies of the written report as specified in Rule .0901 of this Subchapter when the results of the adult protective services evaluation indicate violations of statutes, rules, or regulations enforced by these agencies.

Statutory Authority G.S. 143B-153.

SECTION .0900 - DOCUMENTATION AND REPORTS

.0901 WRITTEN REPORT OF THE EVALUATION

- (a) Written reports shall be completed when:
- (1) the adult protective services evaluation was conducted on a patient or resident of a facility as defined in G.S. 131E-101, 131D-2(a)(3), or 122C; or
 - (2) evidence of abuse, neglect or exploitation is found.
- (b) After completing the evaluation, a the written report shall be made, compiled, including the following information:
- (1) the name, address, age and condition of the adult;
 - (2) the ~~complaint~~ allegations (the written report shall not include the identity of the person making the complaint);
 - (3) the evaluation including the agency's findings and supporting documents (e.g. psychological, medical report);
 - (4) conclusions;
 - (5) recommendations for action.

Statutory Authority G.S. 143B-153.

.0908 CASE RECORD

A separate record, or a separate section of an existing record, shall be established to contain information on protective services provided to an adult, including the following:

- (1) the report of a need for protective services;
- (2) the written report by the department;
- (3) any court documents about the case; and
- (4) other information relative to the evaluation of the report (~~complaint~~) and the provision of protective services.

Statutory Authority G.S. 143B-153.

CHAPTER 43 - SERVICES PROGRAM PLAN

SUBCHAPTER 43L - SOCIAL SERVICES BLOCK GRANT

SECTION .0200 - SERVICES TO BE PROVIDED

.0201 SOCIAL SERVICES BLOCK GRANT FUNDED SERVICES

Services which may be reimbursed with Social Services Block Grant Funds are:

- (20) ~~in-home services; chore services; in-home aide services (levels I through IV);~~
- (21) ~~in-home services; homemaker services;~~
- (21) ~~(22)~~ nutrition services;
- (22) ~~(23)~~ outpatient services for individuals of all disability groups;

- (23) ~~(24)~~ partial hospitalization services for adults and elderly individuals who are acutely mentally ill or are substance abusers;
- (24) ~~(25)~~ personal and family counseling;
- (25) ~~(26)~~ preparation and delivery of meals;
- (26) ~~(27)~~ problem pregnancy services;
- (27) ~~(28)~~ protective services for adults;
- (28) ~~(29)~~ protective services for children;
- (29) ~~(30)~~ residential treatment for the emotionally disturbed;
- (30) ~~(31)~~ residential treatment programs for children and adolescents who are emotionally disturbed;
- (31) ~~(32)~~ residential treatment/rehabilitation programs for individuals who are alcohol or other drug abusers;
- (32) ~~(33)~~ respite care services;
- (33) ~~(34)~~ social setting and non-hospital medical detoxification services for individuals who are alcoholics;
- (34) ~~(35)~~ transitional residence programs for adult and elderly individuals who are mentally ill;
- (35) ~~(36)~~ transportation services;
- (36) ~~(37)~~ youth services.

Statutory Authority G.S. 108A-71; 143B-10; 143B-153.

SECTION .0400 - ADMINISTRATIVE REQUIREMENTS

.0401 FISCAL MANAGEMENT

The Division of Social Services shall establish the fiscal requirements for the Social Services Block Grant as follows:

- (1) Allocation of Funds. Any allocation of Social Services Block Grant Funds made directly to Department of Human Resources divisions or public or private agencies by the Department of Human Resources is based on the following criteria:
 - (a) identified need for the service program;
 - (b) established priorities of the department;
 - (c) allowability of the program under federal and state rules and regulations;
 - (d) assessed or potential performance of the service program;
 - (e) resource utilization;
 - (f) availability of funds necessary to secure federal financial participation.
- (2) The amount of Social Services Block Grant (SSBG) funds allocated by the Department of Human Resources through the Division of Social Services to each county department of social services will be based on the average of the following two factors applied to

the total amount of SSBG funds available for county departments of social services:

- (a) the percentage of the statewide population residing within each county; and
 - (b) the percentage of the statewide unduplicated count of SSI recipients, food stamp recipients, AFDC recipients and medicaid eligible individuals residing in each county.
- (3) Matching Rates for Financial Participation. The following matching rates apply to financial participation in services funded by the Social Services Block Grant:
- (a) 75 percent financial participation - financial participation for provision of any service listed in Rule .0201 of this Subchapter is available at a rate of 75 percent of the cost of providing the service;
 - (b) 87-1/2 percent financial participation - financial participation for provision of in-home services--day care services for adults, preparation and delivery of meals, housing and home improvement services, ~~in-home services (chore services) and in-home services (homemaker services)~~ and in-home aide services (levels I through IV) -- is available at a rate of 87-1/2 percent of the cost of providing the service;
 - (c) 90 percent financial participation - financial participation for provision of family planning services and the family planning component of health support services is available at a rate of 90 percent of the cost of providing the service;
 - (d) 100 percent financial participation - financial participation for provision of child day care and developmental day services for children is available at a rate of 100 percent of the cost of services for those child day care services reimbursed from an agency's designated 100 percent day care allocation.

Statutory Authority G.S. 143B-153.

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Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources, Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26B .0119 and 10 NCAC 26D .0017.

The proposed effective date of this action is December 1, 1991.

The public hearing will be conducted at 1:30 p.m. on September 3, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 297, Raleigh, N. C. 27603.

Comment Procedures: Written comments concerning this amendment must be submitted by September 3, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N. C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26B - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

.0119 PERSONAL CARE SERVICES

(a) The Division of Medical Assistance will cover personal care services in accordance with federal law. The provision of personal care services must be physician authorized and must meet the following criteria:

- (1) The recipient of the service must have a medical diagnosis that warrants a physician's care and that recipient must be under the direct and ongoing care of the physician prescribing PCS.
- (2) The recipient's medical condition must be stable at maintenance level.
- (3) There must be a medical necessity for the provision of personal care services.

(b) Agencies which may be enrolled as providers of service include: county health departments; county departments of social services; certified home health agencies; hospice agencies enrolled in Medicaid; the State Division of Services for the Blind; agencies accredited through the Community Health Accreditation Program of the National League for Nursing as meeting their Core Standards and specific quality standards for home care organizations providing paraprofessional services; agencies accredited by the Joint Commission on Accreditation of Healthcare Organizations for meeting their Standards for the Accreditation of Home Care and specific quality standards for providers of personal care and support services; agencies accredited by the North Carolina Accreditation Commission for In-Home Aide Services; and agencies approved by the National Homecare Council as meeting Basic National Standards for Homemaker-Home Health Aide Services.

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.170(f).

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT, DURATION, AND SCOPE

.0017 PERSONAL CARE SERVICES

(a) Reimbursement is not available for personal care services exceeding 80 hours per recipient per calendar month.

(b) Reimbursement for personal care services is not available to a given recipient on the same day another substantially equivalent service is provided. Substantially equivalent services include home health aide services, ~~chore services and homemaker services~~, and personal care services provided by an In-Home Aide II or In-Home Aide III.

(c) A member of the recipient's immediate family may not be employed by a provider agency to provide personal care services reimbursed by Medicaid. Immediate family members are defined as spouses, children, parents, grandparents, grandchildren, siblings, including corresponding step- and in-law relationships.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.170(f).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to adopt rule(s) cited as 10 NCAC 26H .0108.

The proposed effective date of this action is December 1, 1991.

The public hearing will be conducted at 1:30 p.m. on September 16, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 297, Raleigh, N. C. 27603.

Comment Procedures: Written comments concerning this adoption must be submitted by September 16, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement which estimates increased expenditures of \$6,395,138.00 is available upon written request from the same address. This adoption is proposed in order to increase reimbursements to State-operated facilities for the atypical services provided to patients with special needs.

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR NURSING FACILITY SERVICES

.0108 REIMBURSEMENT METHODS FOR STATE-OPERATED FACILITIES

(a) A certified State-operated nursing facility is reimbursed for the reasonable costs that are necessary to efficiently meet the needs of its patients and to comply with federal and state laws and regulations. The costs are determined in accordance with Rules .0103 and .0104 of this Section, except that annual cost reports are required for the fiscal year beginning on July 1 and ending on the following June 30 and must be submitted to the Division of Medical Assistance on or before the September 30 that immediately follows the June 30 year end. Payments will be suspended if reports are not filed. The Division of Medical Assistance may extend the deadline for filing the report if in its view good cause exists for the delay. The Medicare principles for the reimbursement of skilled nursing facilities will be utilized for the cost principles that are not specifically addressed in the State Plan.

(b) A per diem rate based on the provider's estimated annual cost divided by patient days will be used to make interim payments. A desk audit and a tentative settlement will be performed on each annual cost report to determine the amount of Medicaid reasonable cost and the amount of interim payments received by the provider.

(c) Any payments in excess of costs will be refunded to the Division. Any costs in excess of payments will be paid to the provider. An annual field audit will be performed by a qualified independent auditor to determine the final settlement amounts.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

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Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to adopt rule(s) cited as 10 NCAC 50B .0208.

The proposed effective date of this action is January 1, 1992.

The public hearing will be conducted at 1:30 p.m. on October 3, 1991 at the North Carolina

Division of Medical Assistance, 1985 Umstead Drive, Room 297, Raleigh, N.C. 27603.

Authority G.S. 108A-43; 108A-54; P.L. 101-508.

Comment Procedures: Written comments concerning this adoption must be submitted by October 3, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

Editor's Note: This Rule was filed on June 28, 1991 as a temporary rule to be effective July 1, 1991, for a period of 180 days to expire on December 31, 1991.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0200 - APPLICATION PROCESS

.0208 MANDATORY USE OF OUTREACH LOCATIONS

The county department of social services shall provide for the acceptance of applications and initial interviews for M-PW and M-IC coverage groups at certain outreach locations as follows:

- (1) disproportionate share acute care hospitals which serve the coverage groups listed; and
- (2) Medicaid enrolled federally qualified health centers.

CHAPTER 5 - MINING: MINERAL RESOURCES

SUBCHAPTER 5B - PERMITTING AND REPORTING

.0012 PERMIT APPLICATION PROCESSING FEES

(a) A non-refundable permit application processing fee, in the amounts stated in Paragraphs (b), ~~and~~ (c) and (d) of this Rule, shall be paid when an application for a new mining permit, a permit modification or a renewal permit, is filed in accordance with G.S. 74-51 or G.S. 74-52 and 15A NCAC 5B .0003, .0004, and .0005.

(b) A non-refundable fifty dollar (\$50.00) permit application processing fee is required for minor permit modifications. Minor permit modifications include administrative changes such as ownership transfers, name changes, and bond substitutions. A minor permit modification also includes lands added to a permitted area, outside of the minimum permit buffer zone requirements, where no plans for mining related disturbance of the added lands have been approved. All other changes to the permit are major modifications. No fee is required for administrative changes initiated by the Director to correct processing errors, to change permit conditions or to implement new standards.

(c) A non-refundable fifty dollar (\$50.00) permit application processing fee is required for permit renewal of an inactive, undisturbed site. Once renewed, prior to initiating any mining related disturbance, an application for a major modification and a processing fee shall be submitted to and approved by the Department. For purposes of this Paragraph, and notwithstanding Paragraph (d) of this Rule, the acreage for a major modification shall be the total acreage at the site. All other modifications to the renewed permit shall be governed by Paragraphs (b) and (d) of this Rule.

(d) ~~(c)~~ For the purposes of this Rule, acres for new permits and renewal permits means the total acreage at the site; and acres for major modification of permits means that area of land affected by the modification within the permitted mine area, or any additional land that is to be disturbed and added

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the EIINR - Land Resources intends to amend rule(s) cited as 15A NCAC 5B .0012.

The proposed effective date of this action is December 1, 1991.

The public hearing will be conducted at 10:00 a.m. on September 5, 1991 at the Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within ten (10) days after the hearing or may be presented at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information, contact Tracy E. Davis, Division of Land Resources, P.O. Box 27687, Raleigh, N.C. 27611 (919) 733-4574.

PROPOSED RULES

to an existing permitted area, or both. Each permit application shall be deemed incomplete until the permit application processing fee is paid. Schedule of Fees:

TYPE	ACRES	NEW PERMIT	MAJOR MODIFICATION	RENEWAL
CLAY	1 but less than 25	\$ 500	\$ 250	\$ 250
	25 but less than 50	1000	500	500
	50 or more	1500	500	500
SAND & GRAVEL, GEMSTONE AND BORROW PITS	1 but less than 5	150	100	100
	5 but less than 25	250	100	100
	25 but less than 50	500	250	500
QUARRY, INDUSTRIAL MINERALS, DIMENSION STONE	50 or more	1000	500	500
	1 but less than 10	250	100	100
	10 but less than 25	1000	250	500
PEAT & PHOSPHATE GOLD (HEAP LEACH), TITANIUM & OTHERS	25 but less than 50	1500	500	500
	50 or more	2500	500	500
	1 or more	2500	500	500
	1 or more	2500	500	500

(c) ~~(d)~~ Payment of the permit application processing fee shall be by check or money order made payable to the "N.C. Department of Environment, Health, and Natural Resources". The payment shall refer to the new permit, permit modification or permit renewal.

(f) ~~(e)~~ In order to comply with the limit on fees set forth in G.S. 143B-290(4)b, the Director shall, in the first half of each state fiscal year, project revenues for the fiscal year from fees collected pursuant to this Rule. If this projection shows that the statutory limit will be exceeded, the Director shall order a pro rata reduction in the fee schedule for the remainder of the fiscal year to avoid revenue collection in excess of the statutory limits.

Statutory Authority G.S. 143B-290.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Water Treatment Facility Operators Board of Certification intends to amend rule(s) cited as 15A NCAC 18D .0105, .0203, .0403 - .0404.

The proposed effective date of this action is December 1, 1991.

The public hearing will be conducted at 9:30 a.m. on September 10, 1991 at the Jane S. McKimmon Center, N.C. State University, Western Boulevard, Raleigh, N.C.

Comment Procedures: Any person requiring information may contact Mr. John C. McFadyen, P.O. Box 27687, Raleigh, NC 27611. Telephone (919) 733-0379. Written comments may be submitted to the above address 30 days prior to the public hearing. Written and oral comments may also be presented at the public hearing. Notice

of an oral presentation must be given to the above address at least 3 days prior to the public hearing.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

SECTION .0100 - GENERAL POLICIES

.0105 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (8) "Operator in responsible charge" means a person designated by the owner of ~~a~~ the water treatment facility to be ~~the operator in responsible charge.~~ responsible for the total operation and maintenance of the facility. The operator in responsible charge must possess a valid ~~permanent~~ certificate issued by the Board equivalent to or exceeding the classification of the facility for which he or she is designated. The operator in responsible charge is actually in charge of the daily operation and maintenance of the treatment facility and ~~who resides shall reside~~ within ~~30 minutes~~ 50 miles of the facility and ~~is~~ shall be readily available for consultation ~~at~~ on the premises of the facility in case of an emergency, malfunction or breakdown of equipment or other needs. No person shall be in responsible charge of more than one ~~treatment~~ surface water facility or five well water facilities without written permission from the Board. A request for permission shall include documentation that the facilities in question can be ~~properly~~ managed in compliance with the requirements of 15A NCAC 18C.

Statutory Authority G.S. 90A-21(c).

SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

.0203 DETERMINATION OF VARIOUS CLASSES OF CERTIFICATION

(b) The designation of plant classification shall be based on the following point system:

PARAMETER	RATING VALUE	POINTS
(11) Filtration		
(A) pressure		
(ii) synthetic media		
(brim) <u>(birm)</u>	8	

Statutory Authority G.S. 90A-21(c), -22.

SECTION .0400 - ISSUANCE OF CERTIFICATE

.0403 ISSUANCE OF GRADE CERTIFICATE

(c) Any operator holding a valid surface certification may petition the Board, and the Board may reinstate a revoked, lapsed, or suspended well certification if the grade of the surface certification is equal to or higher than the grade of the well certification.

Statutory Authority G.S. 90A-21(c), -23, -25.

.0404 TEMPORARY CERTIFICATE

(a) A temporary certificate may be issued by the Board when it is found that appropriately certified operators or persons with experience are not available when it can be demonstrated to the Board that the person applying for the temporary certificate is competent and able to fulfill the appropriate duties according to the requirements of 15A NCAC 18C.

(b) Application for such temporary certificate shall be made on a form approved by the Board and must supply the information needed by the Board in order to protect the public health while such temporary certificates are in force.

(c) A temporary certificate is applicable only for the system for which the operator is employed at time of issuance.

Statutory Authority G.S. 90A-21(c); 90A-23; 90A-25.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Hearing Aid Dealers and Fitters Board intends to adopt rule(s) cited as 21 NCAC 22B .0603.

The proposed effective date of this action is December 1, 1991.

The public hearing will be conducted at 1:30 p.m. on September 20, 1991 at the Clemmons Public Library, Clemmons, N.C.

Comment Procedures: Written comments must be received by the Board no later than 10:00 a.m. on 9/20/91; requests to make oral comments at the hearing must be received by 10:00 a.m. on 9/20/91. The Board's address is c/o Mrs. Judy Bedsaul, Executive Secretary, P.O. Box 767, Clemmons, NC 27012. Oral comments may be limited to 3 minutes.

Editor's Note: This Rule has been filed as a temporary rule effective July 11, 1991 for a period of 180 days to expire on January 7, 1992.

CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

SUBCHAPTER 22B - RULE MAKING PROCEDURES

SECTION .0600 - FEES

.0603 FEE SCHEDULE

The Board hereby establishes the following fees:

- (1) For a continuing education make-up class provided by the Board, not to exceed two days (per person, per day).....\$ 50.00
- (2) For a license examination preparation course provided by the Board, not to exceed three days (per person, per day)\$ 50.00
- (3) For approval of a continuing education program provider.....\$ 40.00
- (4) Verifying and recording attendance at a continuing education program (per program, per person)\$ 15.00
- (5) For a voluntary apprentice training workshop (per person, per day).....\$ 50.00
- (6) Examination fee.....\$ 50.00
- (7) Application for a license by examination\$150.00
- (8) Application for a license to fit and sell hearing aids in this state by a licensee of another state or territory\$150.00
- (9) Issuance of certificate of license after successfully passing examination\$ 25.00
- (10) Application for registration as an apprentice\$100.00
- (11) Renewal of apprentice registration\$150.00
- (12) Annual license renewal\$150.00
- (a) Late fee to reinstate expired license within 60 days after license expiration (in addition to renewal fee)\$ 25.00
- (b) Late fee to reinstate expired license more than 60 days after license expiration (in addition to renewal fee)\$ 50.00
- (13) To reissue a suspended license more than 90 days after but not more than two years after license suspended.....\$200.00

Statutory Authority G.S. 12-3.1; 93D-3.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Registration for Professional Engineers and Land Surveyors intends to amend rule(s) cited as 21 NCAC 56 .0901, .1603 - .1604.

The proposed effective date of this action is December 1, 1991.

The public hearing will be conducted at 9:30 a.m. on September 12, 1991 at 3620 Six Forks Road, Suite 300, Raleigh, NC 27609.

Comment Procedures: Any person wishing to present statements either orally, or in writing, at the public hearing should file notice with the Board by submitting a summary of views to be

presented, and preferably a written copy of the presentation, by September 5, 1991. Oral presentations will be limited to ten minutes. Mail should be addressed to the N.C. State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Raleigh, NC 27609.

CHAPTER 56 - BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

SECTION .0900 - BUSINESS ORGANIZATIONS: GENERAL

.0901 OFFICES

(a) Professional Engineering Services. Every firm, partnership or corporation maintaining one or more places of business which performs or offers to perform engineering services in the State of North Carolina for the purpose of performing professional engineering services shall have a resident registered Professional Engineer in respon-

sible charge at each separate place of business in each separate office in which professional engineering services are performed or offered to be performed.

(b) Land Surveying Services. Every firm, partnership or corporation ~~maintaining one or more places of business which performs or offers to perform land surveying services in the State of North Carolina for the purpose of performing land surveying services~~ shall have a resident Registered Land Surveyor in responsible charge at each separate place of business in each separate office in which land surveying services are performed or offered to be performed.

(c) Resident. A resident registered Professional Engineer or Registered Land Surveyor as used in this Rule, means a licensee who spends a majority of his normal working time in said place of business. A registered Professional Engineer or Registered Land Surveyor can be the resident licensee at only one place of business at one time.

(d) No firm, partnership, or corporation shall practice, or offer to practice either land surveying or engineering, unless there is a registered resident for that service in responsible charge at that said place of business. Advertisements, signs, letterheads, business cards, directories, or any other form of representation shall avoid any reference to any service that cannot be provided under the responsible charge of a properly qualified resident professional.

Statutory Authority G.S. 89C-10; 89C-24.

SECTION .1600 - STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA

.1603 CLASSIFICATION OF SURVEYS

(a) General. For the purpose of specifying minimum allowable surveying standards, four general classifications of lands in North Carolina are established from the standpoint of their real value, tax value, or location. Each map ~~other than small lot surveys,~~ shall contain a statement of the calculated ratio of precision before adjustments.

(b) Local Control Network Surveys (Class AA). Local control network surveys are traverse networks utilizing permanent points for the purpose of establishing local horizontal control networks for future use of local surveyors. For Class AA surveys in North Carolina, the angular error of closure shall not exceed ten seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 20,000 feet of perimeter of the parcel of land (1:20,000).

(c) Urban Land Surveys (Class A). Urban surveys include lands which normally lie within a town or city. These lands are usually commercial property and justify maximum surveying accuracy. For Class A surveys in North Carolina, the angular error of closure shall not exceed 20 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 10,000 feet of perimeter of the parcel of land (1:10,000).

(d) Suburban Land Surveys (Class B). Suburban surveys include lands in or surrounding the urban properties of a town or city. The land represented by these surveys is often valuable; but more important, it is land whose value is by definition rapidly increasing. For Class B surveys in North Carolina, the angular error of closure shall not exceed 25 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 7,500 feet of perimeter of the parcel of land (1:7,500).

(e) Rural and Farmland Surveys (Class C). Rural and farmland surveys include lands located in rural areas of North Carolina and generally outside the suburban properties. For Class C surveys in North Carolina, the angular error of closure shall not exceed 30 seconds times the square root of the number of angles turned. The ratio of precision shall not exceed an error of closure of one foot per 5,000 feet of perimeter of the parcel of land (1:5,000).

Statutory Authority G.S. 89C-10; 89C-21.

.1604 MAPPING REQUIREMENTS

(a) The size of a map shall be such that all details can be shown clearly.

(b) Any lines which are not actually surveyed must be clearly indicated on the map by a broken line and a statement included revealing the source of information from which the line is derived.

(c) Any revision on a map after a surveyor's seal is affixed shall be noted and dated.

(d) All surveys based on the North Carolina grid system will contain a statement identifying the coordinate system used as the North American Datum of 1983 ("NAD 83") or the North American Datum of 1927 ("NAD 27").

(e) All plats (maps), unless clearly marked as "Preliminary Plat - Not for recordation, conveyances, or sales" will be sealed, signed and dated by the Registered Land Surveyor and shall contain the following:

(1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to

whether the north index is true, magnetic, North Carolina grid, or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if known) such index was originally determined shall be clearly indicated.

- (2) The azimuth or courses and distances as surveyed of every line shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.
- (3) All plat lines shall be horizontal (level) or North Carolina Grid measurements. All information shown on the plat shall be correctly plotted to the scale shown. Enlargement of portions of a plat are acceptable in the interest of clarity, where shown as inserts on the same sheet. Where the North Carolina grid system is used the grid factor shall be shown on the face of the plat and a designation as to whether horizontal ground distances or grid distances were used.
- (4) Where a boundary is formed by a curved line, the following data must be given: actual curve data, or as a traverse of bearings and distances around the curve. If standard curve data is used the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on the face of the plat.
- (5) Where a subdivision of land is set out on the plat, all streets and lots shall be carefully plotted with dimension lines indicating widths and all other information pertinent to reestablishing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.
- (6) Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and pertinent information as required in the reference statute shall be plotted on the plat. All other corners which are marked by monument or natural object shall be so identified on all plats, and all corners of adjacent owners in the boundary lines of the subject tract which are marked by monument or natural object must be shown with a distance from one or more of the subject tract's corners.
- (7) The names of adjacent land owners along with lot, block or parcel identifier and subdivision designations or other legal

reference where applicable, shall be shown where they could be determined by the surveyor.

- (8) All visible and apparent rights-of-way, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.
- (9) Where the plat is the result of a survey, one or more corners shall, by a system of azimuths, or courses and distances, be accurately tied to and coordinated with a monument of some United States or State Agency survey system, such as the National Geodetic Survey (formerly U.S. Coast and Geodetic Survey) system, where such monument is within 2,000 feet of said corner. Where the North Carolina grid system coordinates of said monument are on file in the Department of Natural Resources and Community Development, the coordinates of the referenced corner shall be computed and shown in X (casting) and Y (northing) coordinates on the map. In the absence of Grid Control, or within a previously recorded subdivision, other appropriate natural monuments or land marks shall be used.
- (10) A vicinity map shall appear on the face of the plat.
- (11) ~~The Title Block or title space of~~ Each map shall contain the property designation, name of owner or prospective owner, location (including township, county, and state), and the date or dates the survey was conducted in the title space or Title Block. In addition each map will contain a scale of the drawing listed in words or figures, a bar-graph when required or necessary, the name, address, registration number, and seal of the surveyor, ~~and the title source, and a legend depicting nomenclature.~~
- (12) ~~Area if indicated,~~ is to be computed by double meridian distance or equally accurate method. Area computations by estimation, by planimeter, by scale, or by copying from another source are not acceptable methods, except in the case of tracts containing inaccessible areas and in these areas the method of computation will be clearly stated.

Statutory Authority G.S. 89C-10; 89C-21.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Real Estate Commission intends to amend rule(s) cited as 21 NCAC 58D .0102, .0203, .0206; and adopt rule(s) cited as 21 NCAC 58D .0210.

The proposed effective date of this action is January 1, 1992.

The public hearing will be conducted at 3:00 p.m. on September 17, 1991 at the Office of the

North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, North Carolina 27609.

Comment Procedures: Comments regarding the rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to the North Carolina Real Estate Commission, Post Office Box 17100, Raleigh, North Carolina 27619, so as to be received by the hearing date.

CHAPTER 58 - REAL ESTATE COMMISSION

SUBCHAPTER 58D - REAL ESTATE APPRAISERS

SECTION .0100 - APPLICATION FOR APPRAISER LICENSE OR CERTIFICATE

.0102 FILING AND FEES

(b) The following fees shall be charged:

(1) application for original residential appraiser license.....	\$100.00	<u>\$150.00</u>
(2) application for original residential appraiser certificate.....	\$100.00	<u>\$150.00</u>
(3) application for original general appraiser certificate.....	\$100.00	<u>\$150.00</u>

Statutory Authority G.S. 93A-73(a),(b); 93A-77.

SECTION .0200 - APPRAISER LICENSING AND CERTIFICATION

.0203 LICENSE AND CERTIFICATE RENEWAL

(a) A holder of an appraiser license or certificate desiring the renewal of such license or certificate shall, during the month of June, apply for same in writing upon a form approved by the Commission and shall forward the required fee of ~~seventy five dollars (\$75.00)~~ one hundred dollars (\$100.00). Forms are available upon request to the Commission.

Statutory Authority G.S. 93A-74(a),(b); 93A-77.

.0206 EXPIRED LICENSE OR CERTIFICATE

(a) Expired real estate appraiser licenses and certificates may be reinstated within 12 months after expiration upon proper application, payment to the Commission of the ~~seventy five dollar (\$75.00)~~ one hundred dollar (\$100.00) renewal fee plus a late filing fee of ten dollars (\$10.00) per month for each month or part thereof that such license or certificate is lapsed, and provision of proof of having obtained the continuing education that would have been required had the license or certificate been continuously renewed.

(b) Licenses and certificates expired for more than 12 months may be considered for reinstatement upon proper application, payment of the ~~one hundred dollar (\$100.00)~~ one hundred fifty dollar (\$150.00) original license or certificate

fee, payment of the one hundred twenty dollar (\$120.00) late filing fee, and provision of proof of having obtained continuing education equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed. Such applications will be reviewed by the Commission to determine whether an examination and/or additional real estate appraisal education will be required.

Statutory Authority G.S. 93A-74(b),(c); 93A-75(d); 93A-77.

.0210 TEMPORARY PRACTICE

(a) A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in such state may apply for registration to receive temporary appraiser licensing or certification privileges in this State by paying a fee of fifty dollars (\$50.00) and filing with the Commission a notarized application form prescribed by the Commission for such purpose which shall set forth and include:

- (1) the applicant's name, address, social security number and such other information as may be necessary to identify the applicant;
- (2) a statement under seal issued by the appraiser licensing or certifying agency in the applicant's resident state setting forth:
 - (A) the applicant's name, business name and address;

- (B) the type license or certificate held by the applicant and the license or certificate number;
- (C) the dates of licensure or certification and the expiration date of the applicant's current license or certificate;
- (D) whether or not the license or certificate was issued as a result of passing a licensure/certification examination, by reciprocity, or by some other means; and
- (E) a complete record of any disciplinary actions taken or disciplinary proceedings pending against the applicant;
- (3) an irrevocable consent that service of process in any action against the applicant arising out of the applicant's appraisal activities in this State may be made by delivery of the process on the Executive Director of the Commission;
- (4) a statement that the applicant has read and agrees to abide by all appraiser laws and rules in this State and agrees to cooperate with any investigation initiated by the Commission at the direction of the Appraisal Board including supplying relevant documents and personally appearing before the Board or the Commission's investigators;
- (5) information sufficient to identify the appraisal assignment to be performed under the temporary practice permit, including the projected beginning and ending dates for performing such appraisal assignment, but shall not require the applicant to divulge any information concerning the appraisal assignment which would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice; and
- (6) such other information as may be necessary to determine the applicant's eligibility

for temporary appraiser licensing or certification privileges in this State.

(b) Upon filing a properly completed application accompanied by the required fee, and otherwise satisfying the Appraisal Board as to his qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Commission authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for the completion of the assignment is reasonable given the scope and complexity of the assignment.

(c) Licensing and certification privileges granted under the provisions of this Rule shall expire upon the completion of the appraisal assignment described in the application for temporary licensing or certification privileges or on the expiration date set forth in the temporary practice permit, whichever shall come first. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's diligent attention to the appraisal assignment, additional time is needed to complete the assignment, the Commission shall extend the licensing or certification privileges granted under the permittee's temporary practice permit to afford him additional time to complete the appraisal assignment.

(d) Persons granted temporary licensing or certification privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina state-licensed or state-certified appraiser.

Authority G.S. 93A-77; Title XI, Section 1122 (a); 12 U.S.C. 3351(a).

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3G - TRAFFIC SAFETY EDUCATION SERVICES SECTION

SECTION .0200 - SCHOOL BUS DRIVER TRAINING AND CERTIFICATION

.0206 PERIOD OF CERTIFICATION

A school bus driver certificate shall be valid for a period of four years, more or less, from the date of certification. Date of expiration will be the driver's birthday in the fourth calendar year following certification. For drivers who are already 65 years of age or older, the date of expiration will be the driver's birthday in the next calendar year. For drivers who will turn 65 in less than four years, the date of expiration will be the driver's birthday in the calendar year in which he turns 65.

*History Note: Statutory Authority G.S. 20-39(b); 20-218;
Eff. April 1, 1989;
Amended Eff. August 1, 1991; September 1, 1990.*

.0207 RENEWAL OF CERTIFICATION

Every driver must be re-certified every four years upon passing the three written tests (general knowledge, passenger transport, and air brakes), the three road tests (pre-trip inspection, basic skills, and road), and an eye test. A driver may be exempted from the written tests, provided he has a driving record clear of any conviction for a moving violation since his last certification and has had at least four hours of in-service training since his last certification. Any driver whose certification expires may be re-certified within the next four years following the expiration upon passing the three written tests (general knowledge, passenger transport, and air brakes), the three road tests (pre-trip inspection, basic skills, and road), and an eye test. If more than four years have elapsed since the expiration of the most recent certification, the applicant must complete the full training course required of a beginning driver.

*History Note: Statutory Authority G.S. 20-39(b); 20-218;
Eff. April 1, 1989;
Amended Eff. August 1, 1991.*

.0209 CANCELLATION OF CERTIFICATION

The Division of Motor Vehicles shall cancel the school bus driver certificate of any driver for the following reasons:

- (1) Any determination that the certificate was issued on the basis of misinformation, false statements, or fraud.
- (2) A suspension, revocation, or cancellation of the driver license.
- (3) Conviction of a motor vehicle moving offense, to the following extent:
 - (a) Driving while impaired;
 - (b) Passing a stopped school bus;
 - (c) Hit and run;
 - (d) Reckless driving;
 - (e) Speeding more than 15 mph above the posted limit;
 - (f) Two convictions within a period of 12 months;
 - (g) A conviction of violation committed while operating a school bus.
- (4) A determination of physical or mental inadequacy under the provisions of the physical requirements noted in Rule .0205 of this Section.

- (5) A local cancellation of certification, in the discretion of the local administrative unit, for violation of local regulations, submitted formally to the Driver Education Specialist for cancellation at the state level.
- (6) Upon recommendation of the Driver Education Specialist or local school officials, the Division of Motor Vehicles may require re-examination of any certified driver whose qualifications become questionable or who exhibits evidence of improper or unsafe driving practices and driving procedures. If such a re-examination reveals a significant problem, the Driver Education Specialist shall have the authority to suspend the certified driver from driving any school bus pending re-training of the driver. If the problem cannot be corrected, the Driver Education Specialist shall have the authority to cancel the certification of the school bus driver.
- (7) A driving record which in its overall character arouses serious question about the reliability, judgment, or emotional stability of the driver.

*History Note: Statutory Authority G.S. 20-39(b); 20-218;
Eff. April 1, 1989;
Amended Eff. August 1, 1991; September 1, 1990.*

.0213 RENEWAL OF CERTIFICATION AFTER CANCELLATION

(a) Any driver whose school bus driver certificate has been canceled shall not be eligible to apply for re-certification for a period of six months from the date of cancellation. Any person so applying must be recommended by the superintendent or principal of the school and shall be required to complete the full training course required for a beginning driver. Such person must meet all the requirements of an original applicant.

(b) The only exceptions to this policy shall be in the case of a local cancellation, in which a written request from the school authorities will be required, and in the case of a suspension for the duration of a status offense such as lapsed liability insurance, failure to appear in court, or failure to comply with an out-of-state citation.

(c) For the purposes of this Section a ten-day revocation shall be considered a suspension for an actual driving action. The driver will remain suspended until the actual adjudication of the case. If at the actual adjudication of the case the driver is found not guilty of driving while impaired, he may be re-instated. If the driver is found guilty of driving while impaired, his suspension will be declared fully effective, and he will not be considered for re-certification for a period of five years following the date of conviction.

*History Note: Statutory Authority G.S. 20-39(b); 20-218;
Eff. April 1, 1989;
Amended Eff. August 1, 1991.*

LIST OF RULES CODIFIED

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

<i>Citation</i>	= Title, Chapter, Subchapter and Rule(s)
<i>AD</i>	= Adopt
<i>AM</i>	= Amend
<i>RP</i>	= Repeal
<i>With Chgs</i>	= Final text differs from proposed text
<i>Eff. Date</i>	= Date rule becomes effective
<i>Temp. Expires</i>	= Rule was filed as a temporary rule and expires on this date

NORTH CAROLINA ADMINISTRATIVE CODE

JULY 1991

TITLE	DEPARTMENT	TITLE	DEPARTMENT
4	Economic and Community Development	16	Public Education
9	Governor	18	Secretary of State
10	Human Resources	19A	Transportation
11	Insurance	21	Occupational Licensing Boards:
13	Labor	22	- Hearing Aid Dealers and Fitters
14A	Crime Control and Public Safety	40	- Opticians
15A	Environment, Health, and Natural Resources	48	- Physical Therapy Examiners

Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
4 NCAC 2R .1502		•			08 01 91	
9 NCAC 2B Executive Order 146					06 28 91	
10 NCAC 3H .1107(b) Recodified to 10 NCAC 3H .0712					06 13 91	
.1107(c) Recodified to 10 NCAC 3H .1805					06 13 91	
10C .0501 - .0514 Transferred and Recodified to 15A NCAC 13B .1501 - .1514					06 27 91	
14K .0103		•			10 01 91	
.0314 - .0315		•			10 01 91	
.0366	•				08 28 91	
.0367	•				08 28 91	
18L .1522		•			10 01 91	
22J .0101 - .0104	•				12 01 91	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
10	NCAC	22J	.0201	•				12 01 91	
			.0301 - .0309	•				12 01 91	
			.0310	•			•	12 01 91	
	24A		.0303		•		•	09 01 91	
	26D		.0014		•			08 01 91	
	26H		.0205		•		•	08 01 91	
	35E		.0103		•		•	10 01 91	
	41I		.0102		•			07 10 91	01 05 92
			.0304		•			07 10 91	01 05 92
			.0401 - .0410	•				07 10 91	01 05 92
	42B		.1201		•			08 01 91	
	42C		.2001 - .2002		•			08 01 91	
			.2006		•			08 01 91	
	45H		.0201		•			08 01 91	
			.0203		•			08 01 91	
			.0204		•			08 01 91	
	50B		.0208	•				07 01 91	12 31 91
11	NCAC	16	.0102		•			08 01 91	
13	NCAC	7C	.0101		•			08 06 91	
14A	NCAC	9A	.0001		•			08 01 91	
15A	NCAC	2D	.0103		•			08 01 91	
			.0501		•			08 01 91	
			.0503		•			08 01 91	
			.0524 - .0525		•		•	08 01 91	
			.0530		•			08 01 91	
			.0531		•		•	08 01 91	
			.0536		•		•	08 01 91	
	2H		.0103		•		•	08 01 91	
			.0105		•		•	08 01 91	
			.0107		•		•	08 01 91	
			.0127		•		•	08 01 91	
			.0128 - .0137			•		08 01 91	
			.0601		•		•	08 01 91	
			.0607		•			08 01 91	
	7O		.0105		•			08 01 91	
	10B		.0115		•		•	08 01 91	
	10D		.0003		•		•	08 01 91	
	10F		.0324		•		•	08 01 91	

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Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
15A NCAC 10F .0364	•			•	08 01/91	
13A .0009		•		•	08 01/91	
.0011		•			08 01/91	
.0013		•			08 01/91	
.0016	•			•	08 01/91	
.0017	•				08 01/91	
16A .0211	•			•	08 01/91	
.0702		•			08 01/91	
.0711		•		•	08 01/91	
18A .1937		•		•	08 01/91	
.1952		•			08 01/91	
.1954 - .1955		•			08 01/91	
.1958		•		•	08 01/91	
.1961		•			07 03/91	12 30 91
.1961 - .1962		•		•	08 01/91	
.2210		•			08 01/91	
.2525		•			08 01/91	
.2601		•		•	08 01/91	
18C .0102		•		•	08 01/91	
19A .0201(d)(e) Recodified to 15A NCAC 19A .0202					06 12/91	
.0201(i) Recodified to 15A NCAC 19A .0203					06 12/91	
.0202 - .0204 Recodified to 15A NCAC 19A .0210 - .0212					06 12/91	
19B .0503		•			08 01/91	
19C .0601 - .0603		•		•	08 01/91	
.0604		•			08 01/91	
.0605		•		•	08 01/91	
.0606		•			08 01/91	
.0607		•		•	08 01/91	
19H .0703		•		•	08 01/91	
.0704		•			08 01/91	
.0805		•			08 01/91	
21A .0817		•			08 01/91	
26A .0001		•			08 01/91	

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Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
16	NCAC	1A	.0001		•			08 01 91	
18	NCAC	6	.1210		•			08 01 91	
19A	NCAC	3G	.0206 - .0207		•			08 01 91	
			.0209		•			08 01 91	
			.0213		•			08 01 91	
21	NCAC	22B	.0603	•				07 11 91	01 07 92
		40	.0202		•			08 01 91	
		48E	.0110		•		•	08 01 91	
		48F	.0002		•			08 01 91	
		48G	.0203		•		•	08 01 91	

ARRC OBJECTIONS

The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).

ADMINISTRATION

Auxiliary Services

- 1 NCAC 4G .0212 - Telefax and Telegraph Proposals
Agency Revised Rule

ARRC Objection 5/16/91
Obj. Removed 5/16/91

AGRICULTURE

Plant Industry

- 2 NCAC 48F .0306 - Collection and Sale of Venus Flytrap
Agency Revised Rule

ARRC Objection 4/18/91
Obj. Removed 4/18/91

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

- 4 NCAC 3G .0203 - Expiration and Renewal
Agency Revised Rule
4 NCAC 3G .0502 - Annual Report
Agency Revised Rule
4 NCAC 3G .0601 - Revocation or Suspension; Hearings
Agency Revised Rule

ARRC Objection 3/21/91
Obj. Removed 4/18/91
ARRC Objection 3/21/91
Obj. Removed 4/18/91
ARRC Objection 3/21/91
Obj. Removed 4/18/91

Hazardous Waste Management Commission

- 4 NCAC 18 .0309 - Final Site
Agency Returned Rule Unchanged
Agency Revised Rule

ARRC Objection 1/18/91
No Action 2/25/91
ARRC Objection 4/18/91
Obj. Removed 5/16/91

EDUCATION

Elementary and Secondary Education

- 16 NCAC 6C .0207 - Prospective Teacher Scholarship Loans

ARRC Objection 6/21/91

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

- 15A NCAC 16A .0804 - Financial Eligibility
No Response from Agency
Agency Responded
No Response from Agency
15A NCAC 16A .0806 - Billing the HIV Health Services Program
No Response from Agency
Agency Responded
No Response from Agency

ARRC Objection 1/18/91
2/25/91
No Action 3/21/91
No Action 4/18/91
ARRC Objection 1/18/91
2/25/91
No Action 3/21/91
No Action 4/18/91

Coastal Management

ARRC OBJECTIONS

<i>15A NCAC 7J .0409 - Civil Penalties</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>2/25/91</i>
<i>Rule Returned to Agency</i>	<i>No Action</i>	<i>4/18/91</i>
<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>6/1/91</i>

Environmental Health

<i>15A NCAC 18A .2537 - Appeals</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>4/18/91</i>
<i>Agency Withdrew Rule</i>		<i>5/16/91</i>
<i>15A NCAC 18A .2616 - Requirements for Employees</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>5/16/91</i>
<i>15A NCAC 18A .2618 - Cleaning of Equipment and Utensils</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>5/16/91</i>
<i>15A NCAC 18A .2711 - Toilet Facilities</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>5/16/91</i>

HUMAN RESOURCES

Facility Services

<i>10 NCAC 3C .0914 - Defs Applicable/Psychiatric/Substance Abuse Svcs</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 3J .2401 - Requirement for Operations Manual</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 3T .0102 - Definitions</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 3T .0603 - Home Health Aide Services</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 3T .1101 - Administration</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 3T .1112 - Design and Construction</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 3T .1114 - Plumbing</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 3T .1206 - Hospice Inpatient Fire and Safety Requirements</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>

Individual and Family Support

<i>10 NCAC 42B .1201 - Personnel Requirements</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>No Response from Agency</i>		<i>2/25/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>3/21/91</i>
<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>8/01/91</i>
<i>10 NCAC 42C .2001 - Qualifications of Administrator</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>No Response from Agency</i>		<i>2/25/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>3/21/91</i>
<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>8/01/91</i>
<i>10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>No Response from Agency</i>		<i>2/25/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>3/21/91</i>
<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>8/01/91</i>
<i>10 NCAC 42C .2006 - Qualifications of Activities Coordinator</i>	<i>ARRC Objection</i>	<i>1/18/91</i>
<i>No Response from Agency</i>		<i>2/25/91</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>3/21/91</i>

ARRC OBJECTIONS

<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>8/01/91</i>
<i>10 NCAC 42C .3301 - Existing Building</i>	<i>ARRC Objection</i>	<i>11/14/90</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>12/20/90</i>
<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>5/01/91</i>
<i>10 NCAC 42D .1401 - Qualifications of Administrator/Co-Administrator</i>	<i>ARRC Objection</i>	<i>11/14/90</i>
<i>Agency Returned Rule Unchanged</i>	<i>No Action</i>	<i>12/20/90</i>
<i>Agency Filed Rule with OAH</i>	<i>Rule Eff.</i>	<i>5/01/91</i>

Social Services

<i>10 NCAC 24A .0303 - Sel/County Board Members/Social Svcs Comm</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>10 NCAC 39D .0202 - Conciliation Procedure</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 39D .0408 - Participation Expenses</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 39D .0409 - One-Time Work Related Expenses</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>10 NCAC 39D .0411 - Supportive Svcs/Available in Non-JOBs Counties</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>

JUSTICE

NC Criminal Justice Education

<i>12 NCAC 9B .0301 - Certification of Instructors</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>5/16/91</i>
<i>12 NCAC 9B .0302 - General Instructor Certification</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>

LABOR

Migrant Housing

<i>13 NCAC 16 .0201 - Conduct of Preoccupancy Inspections</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>13 NCAC 16 .0301 - Provisional Occupancy</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>13 NCAC 16 .0302 - Provisional Occupancy Denied</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>13 NCAC 16 .0303 - Inspection of Provisionally Occupied Housing</i>	<i>ARRC Objection</i>	<i>4/18/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>

LICENSING BOARDS AND COMMISSIONS

Auctioneer's Commission

<i>21 NCAC 4B .0602 - Advertising</i>	<i>ARRC Objection</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>

Cosmetic Art Examiners

<i>21 NCAC 14F .0010 - Sanitary Rules</i>	<i>ARRC Objection</i>	<i>5/16/91</i>
<i>21 NCAC 14G .0017 - Changes in Teaching Staff</i>	<i>ARRC Objection</i>	<i>5/16/91</i>
<i>21 NCAC 14I .0302 - Library</i>	<i>ARRC Objection</i>	<i>2/25/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>3/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>4/18/91</i>
<i>21 NCAC 14I .0304 - Classroom Work</i>	<i>ARRC Objection</i>	<i>5/16/91</i>
<i>21 NCAC 14L .0210 - Effect on Student-Teacher Ratio</i>	<i>ARRC Objection</i>	<i>2/25/91</i>

ARRC OBJECTIONS

Agency Responded
Agency Revised Rule

No Action 3/21/91
Obj. Removed 4/18/91

Dental Examiners

21 NCAC 16C .0310 - *Reexamination*
Agency Withdrew Rule
21 NCAC 16D .0101 - *Eligibility Requirements*
Agency Revised Rule

ARRC Objection 3/21/91
4/18/91
ARRC Objection 3/21/91
Obj. Removed 4/18/91

Medical Examiners

21 NCAC 32B .0309 - *Personal Interview*
Agency Responded
Rule Returned to Agency

ARRC Objection 2/25/91
No Action 3/21/91
5/16/91

Mortuary Science

21 NCAC 34C .0102 - *Applicability of Statutes*
Agency Withdrew Rule

ARRC Objection 5/16/91
5/16/91

STATE PERSONNEL

25 NCAC 1D .0509 - *Severance Salary Continuation*
Agency's Response Unacceptable
Rule Returned to Agency

ARRC Objection 1/18/91
2/25/91
4/18/91

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

10 NCAC 26I .0101 - PURPOSE: SCOPE/NOTICE OF CHANGE IN LEVEL OF CARE

10 NCAC 26I .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 26I .0101, 10 NCAC 26I .0102 and 10 NCAC 26I .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHR 0940).

10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES

10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST

The North Carolina Court of Appeals, per Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. 603, 398 S.E.2d 40 (1990)].

16 NCAC 6D .0105 - USE OF SCHOOL DAY

The North Carolina Supreme Court, per Associate Justice Henry E. Frye, held invalid Rule 16 NCAC 6D .0105 as decided in *The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction, Plaintiffs v. Whittle Communications and The Thomasville City Board of Education, Defendant-Counterclaimants and The Davidson County Board of Education, Defendant-Intervenor and Counterclaimant v. The State of North Carolina; The North Carolina State Board of Education; and Bob Etheridge, State Superintendent of Public Instruction; and Howard S. Haworth; Barbara M. Tapscott; Kenneth R. Harris; Teena Smith Little; W.C. Meekins Jr.; Mary B. Morgan; Patricia H. Neal; Cary C. Owen; Donald D. Pollock; Prezell R. Robinson; Norma B. Turnage; State Treasurer Harlan E. Boyles; and Lt. Governor James C. Gardner; in their official capacities as members of The North Carolina State Board of Education, Counterclaim Defendants* [328 N.C. 456, 402 S.E.2d 556 (1991)].

15A NCAC 7H .0308 - SPECIFIC USE STANDARDS

The North Carolina Court of Appeals, per Judge Sidney S. Eagles Jr., held that it was error for the Coastal Resources Commission to fail to follow the required notice and comment procedure prior to the adoption of temporary rule 15A NCAC 7H .0308(a)(1)(M), but that the CRC followed proper procedures when it adopted the text of the temporary rule as a permanent rule [15A NCAC 7H .0308(a)(1)(M)]. *Conservation Council of North Carolina v. Haste* [102 N.C. App. 411, 402 S.E.2d 447 (1991)].

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
12	Justice	Hearing Aid Dealers and Fitters	22
13	Labor	Landscape Architects	26
14A	Crime Control and Public Safety	Landscape Contractors	28
15A	Environment, Health, and Natural Resources	Marital & Family Therapy	31
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17	Revenue	Midwifery Joint Committee	33
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19A	Transportation	Nursing	36
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23	Community Colleges	Optometry	42
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		Practicing Counselors	53
		Practicing Psychologists	54
		Professional Engineers and Land Surveyors	56
		Real Estate Commission	58
		Refrigeration Examiners	60
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		Social Work	63
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- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
- M - Miscellaneous
- NP - Notice of Petitions
- PR - Proposed Rule
- SO - Statements of Organization
- TR - Temporary Rule

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